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Montana Legislative History

Chapter: 588 Session L: 1999

Bill Number: 499 House / Senate

Checklist of Bill History

History and Final Status Sheet	☐
Introduced Bill	☑
Fiscal Note	☐
Third Reading Bill	☑
Final Version of Bill	☑

House

Committee: Natural Resources

Hearing Date(s):
3-19-99
3-22-99

Committee Report:

Senate

Committee: Natural Resources

Hearing Date(s):
2-19-99

Committee Report:

Conference Committee

Hearing Date(s):
4-13-99 & 4-15-99

Conference Committee Report:

Compiler Notes

Compiled by: aef

Date: 11-9-23

Notes:

Bill Draft Number: LC1530
Bill Type - Number: SB 499
Short Title: Revise water quality act per federal requirements
Primary Sponsor: Lorents Grosfield (R) SD 13
Chapter Number: 588

Bill Actions - **Current Bill Progress:** Became Law

Bill Action Count: 60

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/10/1999			
(S) Signed by Governor	05/10/1999			
(S) Transmitted to Governor	04/30/1999			
(H) Signed by Speaker	04/29/1999			
(S) Signed by President	04/23/1999			
(S) Returned from Enrolling	04/22/1999			
(C) Printed - New Version Available	04/21/1999			
(S) Sent to Enrolling	04/21/1999			
(H) 3rd Reading Free Conference Committee Report Adopted	04/21/1999	67	32	
(H) Scheduled for 3rd Reading	04/21/1999			
(H) 2nd Reading Free Conference Committee Report Adopted	04/20/1999	54	46	
(H) Scheduled for 2nd Reading	04/20/1999			
(H) Scheduled for 2nd Reading	04/19/1999			
(S) 3rd Reading Free Conference Committee Report Adopted	04/17/1999	45	4	
(S) Scheduled for 3rd Reading	04/17/1999			
(S) 2nd Reading Free Conference Committee Report Adopted	04/16/1999	49	1	
(S) Scheduled for 2nd Reading	04/16/1999			
(S) Free Conference Committee Report Received	04/15/1999			
(H) Free Conference Committee Report Received	04/15/1999			
(S) Hearing	04/15/1999			(S) Free Conference
(S) Hearing	04/13/1999			(S) Free Conference
(H) Free Conference Committee Appointed	04/08/1999			(H) Free Conference
(S) Free Conference Committee Appointed	04/07/1999			
(S) Referred to Committee	04/07/1999			(S) Free Conference
(S) 2nd Reading House Amendments Not Concurred	04/06/1999	50	0	
(S) Scheduled for 2nd Reading	04/06/1999			
(H) Returned to Senate with Amendments	03/29/1999			
(H) 3rd Reading Concurred	03/29/1999	83	15	

(H) Scheduled for 3rd Reading	03/29/1999			
(H) 2nd Reading Concurred	03/27/1999	84	15	
(H) Scheduled for 2nd Reading	03/27/1999			
(C) Printed - New Version Available	03/24/1999			
(H) Committee Report--Bill Concurred as Amended	03/24/1999			(H) Natural Resources
(H) Committee Executive Action--Bill Concurred as Amended	03/23/1999	14	6	(H) Natural Resources
(H) Hearing	03/19/1999			(H) Natural Resources
(H) Referred to Committee	03/02/1999			(H) Natural Resources
(H) First Reading	03/02/1999			
(S) Transmitted to House	02/24/1999			
(S) 3rd Reading Passed	02/24/1999	46	3	
(S) Scheduled for 3rd Reading	02/24/1999			
(S) 2nd Reading Passed	02/23/1999	49	0	
(S) Scheduled for 2nd Reading	02/23/1999			
(S) Committee Report--Bill Passed as Amended	02/22/1999			(S) Natural Resources
(S) Committee Executive Action--Bill Passed as Amended	02/22/1999	9	1	(S) Natural Resources
(S) Hearing	02/19/1999			(S) Natural Resources
(C) Introduced Bill Text Available Electronically	02/15/1999			
(S) Referred to Committee	02/15/1999			(S) Natural Resources
(S) First Reading	02/15/1999			
(S) Introduced	02/15/1999			
(C) Draft Delivered to Requester	02/13/1999			
(C) Draft Ready for Delivery	02/13/1999			
(C) Draft in Assembly/Executive Director Review	02/12/1999			
(C) Draft in Final Drafter Review	02/12/1999			
(C) Bill Draft Text Available Electronically	02/12/1999			
(C) Draft to Drafter - Edit Review	02/12/1999			
(C) Draft in Edit	02/12/1999			
(C) Draft in Legal Review	02/12/1999			
(C) Draft to Requester for Review	02/12/1999			
(C) Draft On Hold	01/30/1999			
(C) Draft Request Received	01/07/1999			

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Swysgood	Chuck	

Drafter	Williams	Kathleen
Primary Sponsor	Grosfield	Lorents

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Environmental Protection		Simple	ENVP
Water		Simple	WAT

Additional Bill Information

Fiscal Note Probable: No
Preintroduction Required: N
Session Law Ch. Number: 588
DEADLINE
Category: General Bills
Transmittal Date: 02/24/1999
Return (with 2nd house amendments) Date: 04/01/1999

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	10-MAY-99	

SENATE BILL NO. 499

INTRODUCED BY L. GROSFIELD

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE WATER QUALITY ACT TO ENSURE CONSISTENCY WITH FEDERAL REQUIREMENTS; AMENDING NONDEGRADATION SIGNIFICANCE CRITERIA; AMENDING NONDEGRADATION REQUIREMENTS FOR OUTSTANDING RESOURCE WATERS; AMENDING SECTIONS 75-5-301, 75-5-316, AND 75-5-317, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-201 and this chapter, the board shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) (a) formulate and adopt standards of water quality, giving consideration to the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312.

(b) Standards adopted by the board must meet the following requirements:

(i) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-5 for other carcinogens. However, if a standard established at a risk level of 1 x 10-3 for arsenic or 1 x 10-5 for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(ii) standards for the protection of aquatic life do not apply to ground water.

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the

department be specifically identified and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment and with the potential for identifiable adverse impacts to a beneficial use;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur;

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter for nitrate as nitrogen sources other than domestic sewage;

(ii) 5.0 milligrams per liter for domestic sewage effluent discharged from a conventional septic system;

(iii) 7.5 milligrams per liter for domestic sewage effluent discharged from a septic system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter for domestic sewage effluent discharged from a conventional septic system

in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section 2. Section 75-5-316, MCA, is amended to read:

"75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure. (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules regarding the classification of waters as outstanding resource waters. ~~Neither this section nor rules adopted pursuant to this section apply to an activity that is identified as nonsignificant under 75-5-301(5)(c) and that is exempted from nondegradation review required under 75-5-303.~~

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) ~~grant an authorization to degrade if that authorization would cause significant degradation, as defined by board rules adopted under 75-5-301(5), in outstanding resource waters~~ allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and finds that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the classification is necessary to protect the outstanding resource identified under subsection (3)(a);

and

(iii) there is no other effective process available that will achieve the necessary protection.

(4) The board shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the board may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) After acceptance of a petition, the board shall require the preparation of an environmental impact statement, as provided under Title 75, chapter 1, part 2, when classification as an outstanding resource water may cause significant adverse impacts to the environment, including significant adverse impacts to social or economic values.

(6) The board shall consult with other relevant state agencies when reviewing outstanding resource water classification petitions.

(7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3) have not been met; or

(ii) based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the board denies the petition, it shall identify its reasons for petition denial.

(8) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(9) The board may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 based on pending:

(a) board action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of board action designating those waters as outstanding resource waters."

Section 3. Section 75-5-317, MCA, is amended to read:

"75-5-317. Nonsignificant activities. (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

(d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

(e) changes in existing ground water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;

(f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices and if no discharge to surface water will occur;

(g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;

(h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

(i) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public

sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

(j) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

(k) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

(l) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

(m) coal and uranium prospecting that does not result in a discharge to surface water and that is performed in accordance with Title 82, chapter 4;

(n) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

(o) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(p) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

(q) nonpoint sources of pollution that cause short-term changes in existing water quality resulting from:

(i) activities authorized under Title 75, chapter 7, part 1; or

(ii) customary activities involving the use of water established by an existing water right or permit recognized under Montana law;

(r) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short

term; and

(s) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)."

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

- END -

SENATE BILL NO. 499

INTRODUCED BY L. GROSFIELD, C. SWYSGOOD

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE WATER QUALITY ACT TO ENSURE CONSISTENCY WITH FEDERAL REQUIREMENTS; AMENDING NONDEGRADATION SIGNIFICANCE CRITERIA; AMENDING NONDEGRADATION REQUIREMENTS FOR OUTSTANDING RESOURCE WATERS; AMENDING SECTIONS 75-5-301, 75-5-316, AND 75-5-317, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-201 and this chapter, the board shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) (a) formulate and adopt standards of water quality, giving consideration to the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312.

(b) Standards adopted by the board must meet the following requirements:

(i) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-5 for other carcinogens. However, if a standard established at a risk level of 1 x 10-3 for arsenic or 1 x 10-5 for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(ii) standards for the protection of aquatic life do not apply to ground water.

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the

department be specifically identified and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment and with the potential for ~~identifiable~~ adverse impacts to a beneficial use;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur;

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter for nitrate as nitrogen sources other than domestic sewage;

(ii) 5.0 milligrams per liter for domestic sewage effluent discharged from a conventional septic system;

(iii) 7.5 milligrams per liter for domestic sewage effluent discharged from a septic system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter for domestic sewage effluent discharged from a conventional septic system

in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section 2. Section 75-5-316, MCA, is amended to read:

"75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure. (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules regarding the classification of waters as outstanding resource waters. ~~Neither this section nor rules adopted pursuant to this section apply to an activity that is identified as nonsignificant under 75-5-301(5)(c) and that is exempted from nondegradation review required under 75-5-303.~~

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) ~~grant an authorization to degrade if that authorization would cause significant degradation, as defined by board rules adopted under 75-5-301(5), in outstanding resource waters~~ allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and finds that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the classification is necessary to protect the outstanding resource identified under subsection (3)(a);

and

(iii) there is no other effective process available that will achieve the necessary protection.

(4) The board shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the board may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) After acceptance of a petition, the board shall require the preparation of an environmental impact statement, as provided under Title 75, chapter 1, part 2, when classification as an outstanding resource water may cause significant adverse impacts to the environment, including significant adverse impacts to social or economic values.

(6) The board shall consult with other relevant state agencies when reviewing outstanding resource water classification petitions.

(7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3) have not been met; or

(ii) based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the board denies the petition, it shall identify its reasons for petition denial.

(8) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(9) The board may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 based on pending:

(a) board action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of board action designating those waters as outstanding resource waters."

Section 3. Section 75-5-317, MCA, is amended to read:

"75-5-317. Nonsignificant activities. (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

(d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

(e) changes in existing ground water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;

(f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices and if no discharge to surface water will occur;

(g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;

(h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

(i) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public

sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

(j) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

(k) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

(l) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

(m) coal and uranium prospecting that does not result in a discharge to surface water and that is performed in accordance with Title 82, chapter 4;

(n) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

(o) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(p) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

(q) nonpoint sources of pollution that cause short-term changes in existing water quality resulting from:

(i) activities authorized under Title 75, chapter 7, part 1; or

(ii) customary activities involving the use of water established by an existing water right or permit recognized under Montana law;

(r) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short

term; and

(s) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)."

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

- END -

SENATE BILL NO. 499

INTRODUCED BY L. GROSFIELD, C. SWYSGOOD

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE WATER QUALITY ACT TO ENSURE CONSISTENCY WITH FEDERAL REQUIREMENTS; AMENDING NONDEGRADATION SIGNIFICANCE CRITERIA; REVISING ACTIVITIES FOR WHICH SHORT-TERM EXEMPTIONS FROM WATER QUALITY STANDARDS MAY BE AUTHORIZED; AMENDING NONDEGRADATION REQUIREMENTS FOR OUTSTANDING RESOURCE WATERS; PROVIDING FOR SHORT-TERM TURBIDITY STANDARDS; REMOVING CERTAIN EXCLUSIONS FOR SURFACE WATER DISCHARGE PERMITS; AMENDING SECTIONS 75-5-301, 75-5-308, 75-5-316, ~~AND~~ 75-5-317, AND 75-5-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-201 and this chapter, the board shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) (a) formulate and adopt standards of water quality, giving consideration to the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312.

(b) Standards adopted by the board must meet the following requirements:

(i) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-5 for other carcinogens. However, if a standard established at a risk level of 1 x 10-3 for arsenic or 1 x 10-5 for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(ii) standards for the protection of aquatic life do not apply to ground water.

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health, A BENEFICIAL USE, or the environment ~~and with the potential for identifiable adverse impacts to a beneficial use~~;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur;

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter for nitrate as nitrogen sources other than domestic sewage;

(ii) 5.0 milligrams per liter for domestic sewage effluent discharged from a conventional septic system;

(iii) 7.5 milligrams per liter for domestic sewage effluent discharged from a septic system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter for domestic sewage effluent discharged from a conventional septic system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

SECTION 2. SECTION 75-5-308, MCA, IS AMENDED TO READ:

"75-5-308. Short-term water authorizations -- water quality standards. (1) Because these activities promote the public interest, the ~~The~~ department may, if necessary, authorize short-term exemptions from the water quality standards ~~or short-term use that exceeds the water quality standards for the purposes of allowing construction,~~ for the following activities:

(a) emergency ~~environmental~~ remediation~~,~~ activities that have been approved, authorized, or required by the department; and

(b) ~~pesticide~~ application~~,~~ of a pesticide that is registered by the United States environmental protection agency pursuant to 7 U.S.C. 136(a) when it is used to control nuisance aquatic organisms or to eliminate ~~elimination of~~ undesirable and nonnative aquatic species~~, and treatment of water for the protection of public health~~.

(2) ~~The~~ An authorization must include conditions that minimize, to the extent ~~possible~~ practicable, the magnitude of any ~~standard violation~~ change in the concentration of the parameters affected by the activity and the length of time during which any ~~standard violation~~ change may occur. The authorization must also include conditions that prevent significant risk to public health and that ensure that existing and designated uses of state water are protected and maintained upon completion of the activity ~~must maximize the protection of state waters by ensuring the maintenance of beneficial uses immediately after the term of the authorization~~. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the department may negotiate operating agreements

with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section.

(3) An authorization to use a pesticide does not relieve a person from the duty to comply with Title 80, chapters 8 and 15. The department may not authorize an exemption from water quality standards for an activity that requires a discharge permit under rules adopted by the board pursuant to 75-5-401."

Section 3. Section 75-5-316, MCA, is amended to read:

"75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure. (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules regarding the classification of waters as outstanding resource waters. ~~Neither this section nor rules adopted pursuant to this section apply to an activity that is identified as nonsignificant under 75-5-301(5)(c) and that is exempted from nondegradation review required under 75-5-303.~~

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) ~~grant an authorization to degrade if that authorization would cause significant degradation, as defined by board rules adopted under 75-5-301(5), in outstanding resource waters~~ allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and finds that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the classification is necessary to protect the outstanding resource identified under subsection (3)(a); and

(iii) there is no other effective process available that will achieve the necessary protection.

(4) The board shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the board may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) After acceptance of a petition, the board shall require the preparation of an environmental impact statement, as provided under Title 75, chapter 1, part 2, when classification as an outstanding resource water may cause significant adverse impacts to the environment, including significant adverse impacts to social or economic values.

(6) The board shall consult with other relevant state agencies when reviewing outstanding resource water classification petitions.

(7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3) have not been met; or

(ii) based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the board denies the petition, it shall identify its reasons for petition denial.

(8) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(9) The board may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 based on pending:

(a) board action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of board action designating those waters as outstanding resource waters."

Section 4. Section 75-5-317, MCA, is amended to read:

"75-5-317. Nonsignificant activities. (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

(d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

(e) changes in existing ground water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;

(f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices and if no discharge to surface water will occur;

(g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;

(h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

(i) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

(j) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

(k) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

(l) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

(m) coal and uranium prospecting that does not result in a discharge to surface water, THAT DOES NOT INVOLVE A TEST PIT LOCATED IN SURFACE WATER OR THAT MAY AFFECT SURFACE WATER, and that is performed in accordance with Title 82, chapter 4;

(n) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

(o) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(p) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

(q) ~~nonpoint sources of pollution that cause short-term changes in existing water quality resulting from:~~

~~(i) activities authorized under Title 75, chapter 7, part 1; or~~

~~(ii) customary activities involving the use of water established by an existing water right or permit recognized under Montana law~~ STREAM-RELATED CONSTRUCTION PROJECTS OR STREAM ENHANCEMENT PROJECTS THAT RESULT IN TEMPORARY CHANGES TO WATER QUALITY BUT DO NOT RESULT IN LONG-TERM DETRIMENTAL EFFECTS AND THAT HAVE BEEN AUTHORIZED PURSUANT TO [SECTION 5];

(R) DIVERSIONS OR WITHDRAWALS OF WATER ESTABLISHED AND RECOGNIZED UNDER TITLE 85, CHAPTER 2;

~~(r)~~(S) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that

are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and

~~(s)~~(T) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)."

NEW SECTION. **SECTION 5. SHORT-TERM WATER QUALITY STANDARDS FOR TURBIDITY.** (1) UPON AUTHORIZATION BY THE DEPARTMENT OR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS PURSUANT TO SUBSECTION (4), THE SHORT-TERM WATER QUALITY STANDARDS FOR TOTAL SUSPENDED SEDIMENT AND TURBIDITY RESULTING FROM STREAM-RELATED CONSTRUCTION ACTIVITIES OR STREAM ENHANCEMENT PROJECTS ARE THE NARRATIVE STANDARDS FOR TOTAL SUSPENDED SEDIMENT ADOPTED BY THE BOARD UNDER 75-5-301. IF A SHORT-TERM NARRATIVE STANDARD IS AUTHORIZED UNDER THIS SECTION, THE NUMERIC STANDARD FOR TURBIDITY ADOPTED BY THE BOARD UNDER 75-5-301 DOES NOT APPLY TO THE AFFECTED WATER BODY DURING THE TERM OF THE NARRATIVE STANDARD.

(2) THE DEPARTMENT SHALL REVIEW EACH APPLICATION FOR SHORT-TERM STANDARDS ON A CASE-BY-CASE BASIS TO DETERMINE WHETHER THERE ARE REASONABLE ALTERNATIVES THAT PRECLUDE THE NEED FOR A NARRATIVE STANDARD. IF THE DEPARTMENT DETERMINES THAT THE NUMERIC STANDARD FOR TURBIDITY ADOPTED BY THE BOARD UNDER 75-5-301 CANNOT BE ACHIEVED DURING THE TERM OF THE ACTIVITY AND THAT THERE ARE NO REASONABLE ALTERNATIVES TO ACHIEVE THE NUMERIC STANDARD, THE DEPARTMENT MAY AUTHORIZE THE USE OF A NARRATIVE STANDARD FOR A SPECIFIED TERM.

(3) EACH AUTHORIZATION ISSUED BY THE DEPARTMENT MUST INCLUDE CONDITIONS THAT MINIMIZE, TO THE EXTENT PRACTICABLE, THE MAGNITUDE OF ANY CHANGE IN WATER QUALITY AND THE LENGTH OF TIME DURING WHICH ANY CHANGE MAY OCCUR. THE AUTHORIZATION MUST ALSO INCLUDE SITE-SPECIFIC CONDITIONS THAT ENSURE THAT THE ACTIVITY IS NOT HARMFUL, DETRIMENTAL, OR INJURIOUS TO PUBLIC HEALTH AND THE USES OF STATE WATERS AND THAT ENSURE THAT EXISTING AND DESIGNATED BENEFICIAL USES OF STATE WATER ARE PROTECTED AND MAINTAINED UPON COMPLETION OF THE ACTIVITY. THE DEPARTMENT MAY NOT AUTHORIZE SHORT-TERM NARRATIVE STANDARDS FOR ACTIVITIES REQUIRING A DISCHARGE PERMIT UNDER RULES ADOPTED BY THE BOARD PURSUANT TO 75-5-401. AUTHORIZATIONS ISSUED UNDER THIS SECTION MAY INCLUDE CONDITIONS THAT REQUIRE WATER QUALITY OR QUANTITY MONITORING AND REPORTING.

(4) IN THE PERFORMANCE OF ITS RESPONSIBILITIES UNDER THIS SECTION, THE DEPARTMENT MAY NEGOTIATE OPERATING AGREEMENTS WITH OTHER DEPARTMENTS OF STATE GOVERNMENT THAT ARE INTENDED TO MINIMIZE

DUPLICATION IN REVIEW OF ACTIVITIES ELIGIBLE FOR AUTHORIZATIONS UNDER THIS SECTION. THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS MAY, IN ACCORDANCE WITH SUBSECTIONS (1), (2), AND (3), AUTHORIZE SHORT-TERM WATER QUALITY STANDARDS FOR TOTAL SUSPENDED SEDIMENT AND TURBIDITY FOR ANY STREAM CONSTRUCTION PROJECT THAT IT REVIEWS UNDER TITLE 75, CHAPTER 7, PART 1, OR TITLE 87, CHAPTER 5, PART 5.

SECTION 6. SECTION 75-5-401, MCA, IS AMENDED TO READ:

"75-5-401. Board rules for permits ~~-- ground water exclusions~~. (1) Except as provided in subsection (5), the board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state surface waters and ground waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. ~~Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part and is not degradation if:~~

~~(i) the discharge does not contain industrial waste, sewage, or other wastes;~~

~~(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and~~

~~(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.~~

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit

requirements adopted under subsections (1) through (4)."

NEW SECTION. **SECTION 7. CODIFICATION INSTRUCTION.** [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 75, CHAPTER 5, PART 3, AND THE PROVISIONS OF TITLE 75, CHAPTER 5, PART 3, APPLY TO [SECTION 5].

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

- END -

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(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) (a) formulate and adopt standards of water quality, giving consideration to the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312.

(b) Standards adopted by the board must meet the following requirements:

(i) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-5 for other carcinogens. However, if a standard established at a risk level of 1 x 10-3 for arsenic or 1 x 10-5 for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(ii) standards for the protection of aquatic life do not apply to ground water.

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

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(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health, A BENEFICIAL USE, or the environment ~~and with the potential for identifiable adverse impacts to a beneficial use~~;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur;

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter for nitrate as nitrogen sources other than domestic sewage;

(ii) 5.0 milligrams per liter for domestic sewage effluent discharged from a conventional septic system;

(iii) 7.5 milligrams per liter for domestic sewage effluent discharged from a septic system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter for domestic sewage effluent discharged from a conventional septic system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

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(a) emergency ~~environmental~~ remediation~~,~~ activities that have been approved, authorized, or required by the department; and

(b) ~~pesticide~~ application~~,~~ of a pesticide that is registered by the United States environmental protection agency pursuant to 7 U.S.C. 136(a) when it is used to control nuisance aquatic organisms or to eliminate ~~elimination of~~ undesirable and nonnative aquatic species~~, and treatment of water for the protection of public health~~.

(2) ~~The~~ An authorization must include conditions that minimize, to the extent ~~possible~~ practicable, the magnitude of any ~~standard violation~~ change in the concentration of the parameters affected by the activity and the length of time during which any ~~standard violation~~ change may occur. The authorization must also include conditions that prevent significant risk to public health and that ensure that existing and designated uses of state water are protected and maintained upon completion of the activity ~~must maximize the protection of state waters by ensuring the maintenance of beneficial uses immediately after the term of the authorization~~. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the department may negotiate operating agreements

with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section.

(3) An authorization to use a pesticide does not relieve a person from the duty to comply with Title 80, chapters 8 and 15. The department may not authorize an exemption from water quality standards for an activity that requires a discharge permit under rules adopted by the board pursuant to 75-5-401."

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(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) ~~grant an authorization to degrade if that authorization would cause significant degradation, as defined by board rules adopted under 75-5-301(5), in outstanding resource waters~~ allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and finds that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the classification is necessary to protect the outstanding resource identified under subsection (3)(a); and

(iii) there is no other effective process available that will achieve the necessary protection.

(4) The board shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the board may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) After acceptance of a petition, the board shall require the preparation of an environmental impact statement, as provided under Title 75, chapter 1, part 2, when classification as an outstanding resource water may cause significant adverse impacts to the environment, including significant adverse impacts to social or economic values.

(6) The board shall consult with other relevant state agencies when reviewing outstanding resource water classification petitions.

(7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3) have not been met; or

(ii) based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the board denies the petition, it shall identify its reasons for petition denial.

(8) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(9) The board may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 based on pending:

(a) board action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of board action designating those waters as outstanding resource waters."

Section 4. Section 75-5-317, MCA, is amended to read:

"75-5-317. Nonsignificant activities. (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

(d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

(e) changes in existing ground water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;

(f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices and if no discharge to surface water will occur;

(g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;

(h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

(i) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

(j) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

(k) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

(l) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

(m) coal and uranium prospecting that does not result in a discharge to surface water, THAT DOES NOT INVOLVE A TEST PIT LOCATED IN SURFACE WATER OR THAT MAY AFFECT SURFACE WATER, and that is performed in accordance with Title 82, chapter 4;

(n) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

(o) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(p) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

(q) ~~nonpoint sources of pollution that cause short-term changes in existing water quality resulting from:~~

~~(i) activities authorized under Title 75, chapter 7, part 1; or~~

~~(ii) customary activities involving the use of water established by an existing water right or permit recognized under Montana law~~ STREAM-RELATED CONSTRUCTION PROJECTS OR STREAM ENHANCEMENT PROJECTS THAT RESULT IN TEMPORARY CHANGES TO WATER QUALITY BUT DO NOT RESULT IN LONG-TERM DETRIMENTAL EFFECTS AND THAT HAVE BEEN AUTHORIZED PURSUANT TO [SECTION 5];

(R) DIVERSIONS OR WITHDRAWALS OF WATER ESTABLISHED AND RECOGNIZED UNDER TITLE 85, CHAPTER 2;

~~(r)~~(S) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that

are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and

~~(s)~~(T) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)."

NEW SECTION. **SECTION 5. SHORT-TERM WATER QUALITY STANDARDS FOR TURBIDITY.** (1) UPON AUTHORIZATION BY THE DEPARTMENT OR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS PURSUANT TO SUBSECTION (4), THE SHORT-TERM WATER QUALITY STANDARDS FOR TOTAL SUSPENDED SEDIMENT AND TURBIDITY RESULTING FROM STREAM-RELATED CONSTRUCTION ACTIVITIES OR STREAM ENHANCEMENT PROJECTS ARE THE NARRATIVE STANDARDS FOR TOTAL SUSPENDED SEDIMENT ADOPTED BY THE BOARD UNDER 75-5-301. IF A SHORT-TERM NARRATIVE STANDARD IS AUTHORIZED UNDER THIS SECTION, THE NUMERIC STANDARD FOR TURBIDITY ADOPTED BY THE BOARD UNDER 75-5-301 DOES NOT APPLY TO THE AFFECTED WATER BODY DURING THE TERM OF THE NARRATIVE STANDARD.

(2) THE DEPARTMENT SHALL REVIEW EACH APPLICATION FOR SHORT-TERM STANDARDS ON A CASE-BY-CASE BASIS TO DETERMINE WHETHER THERE ARE REASONABLE ALTERNATIVES THAT PRECLUDE THE NEED FOR A NARRATIVE STANDARD. IF THE DEPARTMENT DETERMINES THAT THE NUMERIC STANDARD FOR TURBIDITY ADOPTED BY THE BOARD UNDER 75-5-301 CANNOT BE ACHIEVED DURING THE TERM OF THE ACTIVITY AND THAT THERE ARE NO REASONABLE ALTERNATIVES TO ACHIEVE THE NUMERIC STANDARD, THE DEPARTMENT MAY AUTHORIZE THE USE OF A NARRATIVE STANDARD FOR A SPECIFIED TERM.

(3) EACH AUTHORIZATION ISSUED BY THE DEPARTMENT MUST INCLUDE CONDITIONS THAT MINIMIZE, TO THE EXTENT PRACTICABLE, THE MAGNITUDE OF ANY CHANGE IN WATER QUALITY AND THE LENGTH OF TIME DURING WHICH ANY CHANGE MAY OCCUR. THE AUTHORIZATION MUST ALSO INCLUDE SITE-SPECIFIC CONDITIONS THAT ENSURE THAT THE ACTIVITY IS NOT HARMFUL, DETRIMENTAL, OR INJURIOUS TO PUBLIC HEALTH AND THE USES OF STATE WATERS AND THAT ENSURE THAT EXISTING AND DESIGNATED BENEFICIAL USES OF STATE WATER ARE PROTECTED AND MAINTAINED UPON COMPLETION OF THE ACTIVITY. THE DEPARTMENT MAY NOT AUTHORIZE SHORT-TERM NARRATIVE STANDARDS FOR ACTIVITIES REQUIRING A DISCHARGE PERMIT UNDER RULES ADOPTED BY THE BOARD PURSUANT TO 75-5-401. AUTHORIZATIONS ISSUED UNDER THIS SECTION MAY INCLUDE CONDITIONS THAT REQUIRE WATER QUALITY OR QUANTITY MONITORING AND REPORTING.

(4) IN THE PERFORMANCE OF ITS RESPONSIBILITIES UNDER THIS SECTION, THE DEPARTMENT MAY NEGOTIATE OPERATING AGREEMENTS WITH OTHER DEPARTMENTS OF STATE GOVERNMENT THAT ARE INTENDED TO MINIMIZE

DUPLICATION IN REVIEW OF ACTIVITIES ELIGIBLE FOR AUTHORIZATIONS UNDER THIS SECTION. THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS MAY, IN ACCORDANCE WITH SUBSECTIONS (1), (2), AND (3), AUTHORIZE SHORT-TERM WATER QUALITY STANDARDS FOR TOTAL SUSPENDED SEDIMENT AND TURBIDITY FOR ANY STREAM CONSTRUCTION PROJECT THAT IT REVIEWS UNDER TITLE 75, CHAPTER 7, PART 1, OR TITLE 87, CHAPTER 5, PART 5.

SECTION 6. SECTION 75-5-401, MCA, IS AMENDED TO READ:

"75-5-401. Board rules for permits ~~-- ground water exclusions~~ -- GROUND WATER EXCLUSIONS. (1) Except as provided in subsection (5), the board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state surface waters and ground waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. ~~Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part and is not degradation if:~~

~~(i) the discharge does not contain industrial waste, sewage, or other wastes;~~

~~(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and~~

~~(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.~~ DISCHARGE TO SURFACE WATER OF GROUND WATER THAT IS NOT ALTERED FROM ITS AMBIENT QUALITY DOES NOT CONSTITUTE A DISCHARGE REQUIRING A PERMIT UNDER THIS PART IF:

(I) THE DISCHARGE DOES NOT CONTAIN INDUSTRIAL WASTE, SEWAGE, OR OTHER WASTES;

(II) THE WATER DISCHARGED DOES NOT CAUSE THE RECEIVING WATERS TO EXCEED APPLICABLE STANDARDS FOR ANY PARAMETERS; AND

(III) TO THE EXTENT THAT THE RECEIVING WATERS IN THEIR AMBIENT STATE EXCEED STANDARDS FOR ANY PARAMETERS, THE DISCHARGE DOES NOT INCREASE THE CONCENTRATION OF THE PARAMETERS.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that

the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit

requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4)."

NEW SECTION. **SECTION 7. CODIFICATION INSTRUCTION.** [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 75, CHAPTER 5, PART 3, AND THE PROVISIONS OF TITLE 75, CHAPTER 5, PART 3, APPLY TO [SECTION 5].

NEW SECTION. **SECTION 8. SAVING CLAUSE.** (1)[THIS ACT] DOES NOT AFFECT A RIGHT TO CONDUCT A CONSTRUCTION ACTIVITY IN ACCORDANCE WITH A SHORT-TERM EXEMPTION GRANTED PURSUANT TO 75-5-308 BEFORE [THE EFFECTIVE DATE OF THIS ACT].

(2) A DISCHARGE FROM A FACILITY OR SOURCE THAT DISCHARGED TO SURFACE WATER PRIOR TO [THE EFFECTIVE DATE OF THIS ACT] AND THAT WAS EXEMPT FROM 75-5-303 PURSUANT TO 75-5-317(2)(E), (2)(K), OR (2)(P) OR 75-5-401(1)(B) AS THOSE SECTIONS READ PRIOR TO [THE EFFECTIVE DATE OF THIS ACT] CONTINUES TO BE EXEMPT FROM 75-5-303 AS LONG AS THE FACILITY OR SOURCE HAS NOT SINCE [THE EFFECTIVE DATE OF THIS ACT] BEEN EXPANDED IN A MANNER THAT INCREASES THE VOLUME OF DISCHARGE OR THE CONCENTRATION OR NATURE OF POLLUTANTS IN THE DISCHARGE.

NEW SECTION. **SECTION 9. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

- END -

SENATE BILL NO. 499

INTRODUCED BY L. GROSFIELD, C. SWYSGOOD

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE WATER QUALITY ACT TO ENSURE CONSISTENCY WITH FEDERAL REQUIREMENTS; AMENDING NONDEGRADATION SIGNIFICANCE CRITERIA; REVISING ACTIVITIES FOR WHICH SHORT-TERM EXEMPTIONS FROM WATER QUALITY STANDARDS MAY BE AUTHORIZED; AMENDING NONDEGRADATION REQUIREMENTS FOR OUTSTANDING RESOURCE WATERS; PROVIDING FOR SHORT-TERM TURBIDITY STANDARDS; ~~REMOVING CERTAIN EXCLUSIONS FOR SURFACE WATER DISCHARGE PERMITS;~~ AMENDING SECTIONS 75-5-301, 75-5-308, 75-5-316, ~~AND~~ 75-5-317, AND 75-5-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-201 and this chapter, the board shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) (a) formulate and adopt standards of water quality, giving consideration to the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312.

(b) Standards adopted by the board must meet the following requirements:

(i) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-5 for other carcinogens. However, if a standard established at a risk level of 1 x 10-3 for arsenic or 1 x 10-5 for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(ii) standards for the protection of aquatic life do not apply to ground water.

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health, A BENEFICIAL USE, or the environment ~~and with the potential for identifiable adverse impacts to a beneficial use~~;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur;

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter for nitrate as nitrogen sources other than domestic sewage;

(ii) 5.0 milligrams per liter for domestic sewage effluent discharged from a conventional septic system;

(iii) 7.5 milligrams per liter for domestic sewage effluent discharged from a septic system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter for domestic sewage effluent discharged from a conventional septic system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

SECTION 2. SECTION 75-5-308, MCA, IS AMENDED TO READ:

"75-5-308. Short-term water authorizations -- water quality standards. (1) Because these activities promote the public interest, the ~~The~~ department may, if necessary, authorize short-term exemptions from the water quality standards ~~or short-term use that exceeds the water quality standards for the purposes of allowing construction,~~ for the following activities:

(a) emergency ~~environmental~~ remediation~~,~~ activities that have been approved, authorized, or required by the department; and

(b) ~~pesticide~~ application~~,~~ of a pesticide that is registered by the United States environmental protection agency pursuant to 7 U.S.C. 136(a) when it is used to control nuisance aquatic organisms or to eliminate ~~elimination of~~ undesirable and nonnative aquatic species~~, and treatment of water for the protection of public health~~.

(2) ~~The~~ An authorization must include conditions that minimize, to the extent ~~possible~~ practicable, the magnitude of any ~~standard violation~~ change in the concentration of the parameters affected by the activity and the length of time during which any ~~standard violation~~ change may occur. The authorization must also include conditions that prevent significant risk to public health and that ensure that existing and designated uses of state water are protected and maintained upon completion of the activity ~~must maximize the protection of state waters by ensuring the maintenance of beneficial uses immediately after the term of the authorization~~. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the department may negotiate operating agreements

with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section.

(3) An authorization to use a pesticide does not relieve a person from the duty to comply with Title 80, chapters 8 and 15. The department may not authorize an exemption from water quality standards for an activity that requires a discharge permit under rules adopted by the board pursuant to 75-5-401."

Section 3. Section 75-5-316, MCA, is amended to read:

"75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure. (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules regarding the classification of waters as outstanding resource waters. ~~Neither this section nor rules adopted pursuant to this section apply to an activity that is identified as nonsignificant under 75-5-301(5)(c) and that is exempted from nondegradation review required under 75-5-303.~~

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) ~~grant an authorization to degrade if that authorization would cause significant degradation, as defined by board rules adopted under 75-5-301(5), in outstanding resource waters~~ allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and finds that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the classification is necessary to protect the outstanding resource identified under subsection (3)(a); and

(iii) there is no other effective process available that will achieve the necessary protection.

(4) The board shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the board may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) After acceptance of a petition, the board shall require the preparation of an environmental impact statement, as provided under Title 75, chapter 1, part 2, when classification as an outstanding resource water may cause significant adverse impacts to the environment, including significant adverse impacts to social or economic values.

(6) The board shall consult with other relevant state agencies when reviewing outstanding resource water classification petitions.

(7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3) have not been met; or

(ii) based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the board denies the petition, it shall identify its reasons for petition denial.

(8) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(9) The board may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 based on pending:

(a) board action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of board action designating those waters as outstanding resource waters."

Section 4. Section 75-5-317, MCA, is amended to read:

"75-5-317. Nonsignificant activities. (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

(d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

(e) changes in existing ground water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;

(f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices and if no discharge to surface water will occur;

(g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;

(h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

(i) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

(j) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

(k) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

(l) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

(m) coal and uranium prospecting that does not result in a discharge to surface water, THAT DOES NOT INVOLVE A TEST PIT LOCATED IN SURFACE WATER OR THAT MAY AFFECT SURFACE WATER, and that is performed in accordance with Title 82, chapter 4;

(n) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

(o) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(p) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

(q) ~~nonpoint sources of pollution that cause short-term changes in existing water quality resulting from:~~

~~(i) activities authorized under Title 75, chapter 7, part 1; or~~

~~(ii) customary activities involving the use of water established by an existing water right or permit recognized under Montana law~~ STREAM-RELATED CONSTRUCTION PROJECTS OR STREAM ENHANCEMENT PROJECTS THAT RESULT IN TEMPORARY CHANGES TO WATER QUALITY BUT DO NOT RESULT IN LONG-TERM DETRIMENTAL EFFECTS AND THAT HAVE BEEN AUTHORIZED PURSUANT TO [SECTION 5];

(R) DIVERSIONS OR WITHDRAWALS OF WATER ESTABLISHED AND RECOGNIZED UNDER TITLE 85, CHAPTER 2;

~~(r)~~(S) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that

are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and

~~(s)~~(T) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)."

NEW SECTION. **SECTION 5. SHORT-TERM WATER QUALITY STANDARDS FOR TURBIDITY.** (1) UPON AUTHORIZATION BY THE DEPARTMENT OR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS PURSUANT TO SUBSECTION (4), THE SHORT-TERM WATER QUALITY STANDARDS FOR TOTAL SUSPENDED SEDIMENT AND TURBIDITY RESULTING FROM STREAM-RELATED CONSTRUCTION ACTIVITIES OR STREAM ENHANCEMENT PROJECTS ARE THE NARRATIVE STANDARDS FOR TOTAL SUSPENDED SEDIMENT ADOPTED BY THE BOARD UNDER 75-5-301. IF A SHORT-TERM NARRATIVE STANDARD IS AUTHORIZED UNDER THIS SECTION, THE NUMERIC STANDARD FOR TURBIDITY ADOPTED BY THE BOARD UNDER 75-5-301 DOES NOT APPLY TO THE AFFECTED WATER BODY DURING THE TERM OF THE NARRATIVE STANDARD.

(2) THE DEPARTMENT SHALL REVIEW EACH APPLICATION FOR SHORT-TERM STANDARDS ON A CASE-BY-CASE BASIS TO DETERMINE WHETHER THERE ARE REASONABLE ALTERNATIVES THAT PRECLUDE THE NEED FOR A NARRATIVE STANDARD. IF THE DEPARTMENT DETERMINES THAT THE NUMERIC STANDARD FOR TURBIDITY ADOPTED BY THE BOARD UNDER 75-5-301 CANNOT BE ACHIEVED DURING THE TERM OF THE ACTIVITY AND THAT THERE ARE NO REASONABLE ALTERNATIVES TO ACHIEVE THE NUMERIC STANDARD, THE DEPARTMENT MAY AUTHORIZE THE USE OF A NARRATIVE STANDARD FOR A SPECIFIED TERM.

(3) EACH AUTHORIZATION ISSUED BY THE DEPARTMENT MUST INCLUDE CONDITIONS THAT MINIMIZE, TO THE EXTENT PRACTICABLE, THE MAGNITUDE OF ANY CHANGE IN WATER QUALITY AND THE LENGTH OF TIME DURING WHICH ANY CHANGE MAY OCCUR. THE AUTHORIZATION MUST ALSO INCLUDE SITE-SPECIFIC CONDITIONS THAT ENSURE THAT THE ACTIVITY IS NOT HARMFUL, DETRIMENTAL, OR INJURIOUS TO PUBLIC HEALTH AND THE USES OF STATE WATERS AND THAT ENSURE THAT EXISTING AND DESIGNATED BENEFICIAL USES OF STATE WATER ARE PROTECTED AND MAINTAINED UPON COMPLETION OF THE ACTIVITY. THE DEPARTMENT MAY NOT AUTHORIZE SHORT-TERM NARRATIVE STANDARDS FOR ACTIVITIES REQUIRING A DISCHARGE PERMIT UNDER RULES ADOPTED BY THE BOARD PURSUANT TO 75-5-401. AUTHORIZATIONS ISSUED UNDER THIS SECTION MAY INCLUDE CONDITIONS THAT REQUIRE WATER QUALITY OR QUANTITY MONITORING AND REPORTING.

(4) IN THE PERFORMANCE OF ITS RESPONSIBILITIES UNDER THIS SECTION, THE DEPARTMENT MAY NEGOTIATE OPERATING AGREEMENTS WITH OTHER DEPARTMENTS OF STATE GOVERNMENT THAT ARE INTENDED TO MINIMIZE

DUPLICATION IN REVIEW OF ACTIVITIES ELIGIBLE FOR AUTHORIZATIONS UNDER THIS SECTION. THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS MAY, IN ACCORDANCE WITH SUBSECTIONS (1), (2), AND (3), AUTHORIZE SHORT-TERM WATER QUALITY STANDARDS FOR TOTAL SUSPENDED SEDIMENT AND TURBIDITY FOR ANY STREAM CONSTRUCTION PROJECT THAT IT REVIEWS UNDER TITLE 75, CHAPTER 7, PART 1, OR TITLE 87, CHAPTER 5, PART 5.

SECTION 6. SECTION 75-5-401, MCA, IS AMENDED TO READ:

"75-5-401. Board rules for permits ~~-- ground water exclusions~~ -- GROUND WATER EXCLUSIONS. (1) Except as provided in subsection (5), the board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state surface waters and ground waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. ~~Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part and is not degradation if:~~

~~(i) the discharge does not contain industrial waste, sewage, or other wastes;~~

~~(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and~~

~~(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.~~ DISCHARGE TO SURFACE WATER OF GROUND WATER THAT IS NOT ALTERED FROM ITS AMBIENT QUALITY DOES NOT CONSTITUTE A DISCHARGE REQUIRING A PERMIT UNDER THIS PART IF:

(I) THE DISCHARGE DOES NOT CONTAIN INDUSTRIAL WASTE, SEWAGE, OR OTHER WASTES;

(II) THE WATER DISCHARGED DOES NOT CAUSE THE RECEIVING WATERS TO EXCEED APPLICABLE STANDARDS FOR ANY PARAMETERS; AND

(III) TO THE EXTENT THAT THE RECEIVING WATERS IN THEIR AMBIENT STATE EXCEED STANDARDS FOR ANY PARAMETERS, THE DISCHARGE DOES NOT INCREASE THE CONCENTRATION OF THE PARAMETERS.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that

the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit

requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4)."

NEW SECTION. **SECTION 7. CODIFICATION INSTRUCTION.** [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 75, CHAPTER 5, PART 3, AND THE PROVISIONS OF TITLE 75, CHAPTER 5, PART 3, APPLY TO [SECTION 5].

NEW SECTION. **SECTION 8. SAVING CLAUSE.** (1)[THIS ACT] DOES NOT AFFECT A RIGHT TO CONDUCT A CONSTRUCTION ACTIVITY IN ACCORDANCE WITH A SHORT-TERM EXEMPTION GRANTED PURSUANT TO 75-5-308 BEFORE [THE EFFECTIVE DATE OF THIS ACT].

(2) A DISCHARGE FROM A FACILITY OR SOURCE THAT DISCHARGED TO SURFACE WATER PRIOR TO [THE EFFECTIVE DATE OF THIS ACT] AND THAT WAS EXEMPT FROM 75-5-303 PURSUANT TO 75-5-317(2)(E), (2)(K), OR (2)(P) OR 75-5-401(1)(B) AS THOSE SECTIONS READ PRIOR TO [THE EFFECTIVE DATE OF THIS ACT] CONTINUES TO BE EXEMPT FROM 75-5-303 AS LONG AS THE FACILITY OR SOURCE HAS NOT SINCE [THE EFFECTIVE DATE OF THIS ACT] BEEN EXPANDED IN A MANNER THAT INCREASES THE VOLUME OF DISCHARGE OR THE CONCENTRATION OR NATURE OF POLLUTANTS IN THE DISCHARGE.

NEW SECTION. **SECTION 9. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on February 19, 1999 at 3:15 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:
Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 492, 2/19/1999; SB 499, 2/19/1999
Executive Action: SB 313; SB 411; SB 462; SB465; SB 492; SB 499; SB 344; SB 345

HEARING ON SB 492

Sponsor: SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER

Proponents:

Anne Hedges, Montana Environmental Information Center
Tom Gilbare, Montana Association of Oil, Gas & Coal Counties
Bill Snoddy, McDonald Gold Project
Frank Crowley, ASARCO
Jill Andrews, Montana Mining Association
Don Allen, Western Environmental Trade Association
Russ Ritter, Montana Resources
Tom Patten, Montana Groundwater Assessment Act

Opponents: **None**

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER, presented **SB 492** which orients the **RIT** back toward reclamation and remediation. There have been previous discussions regarding the **RIT** monies being used for a variety of purposes other than what the tax was originally intended. The legislature in the past twelve years or so has used money from that tax to fund general government.

This bill also works together with **SB 49** and **SB 249**. Most of state government funding came out of the **RIT** through **SB 49** but it did not quite get it all out. This bill tries to remove it but not at the expense of the Groundwater Assessment Program, Orphan Share Account, Reclamation and Development Grant program, etc. The contingent language says if those programs are not funded in **HB 2** from the General Fund then part of this bill is void so those programs can go on funding about $925,000 of state government.

This bill, if passed, will finally get the **RIT** back to funding what it was originally meant to fund. He urged the committee's approval.

Proponents' Testimony:

Anne Hedges, Montana Environmental Information Center, stated she loved the bill because it finally puts the **RIT** money where it belongs which is on the ground, in clean up, and getting the job done. They strongly support the provision for the Orphan Share account. They also support Section 10 - Eligibility Requirements, which even if **SEN. KEATING'S** bill does go through, will remain in effect. It puts more of the money where they think it should be, i.e. cleaning up mineral development sites. The urge a DO PASS.

Tom Gilbare, Montana Association of Oil, Gas & Coal Counties, stated the counties, last fall, unanimously decided to support any kind of legislation that would put the **RIT** money back to the original purpose for which it was intended, focusing on reclamation. The 33 counties he represents strongly urge the committee's support on the bill.

Bill Snoddy, McDonald Gold Project, stated 100 years ago mining in Montana did not have the technology that is commonly used today to reclaim mines. There are 3,834 abandoned mines in Montana with a good portion of them needing reclamation. He gave information to the committee on the 278 abandoned mines in the state which **DEQ** feels qualify for abandoned mine clean up action **EXHIBIT(nas41a01).** The average project now costs about $300,000 to undertake. Some go as high as $1 million. The **RIT** money is set aside to reclaim these historic mines and he encourages a DO PASS.

Frank Crowley, ASARCO, stated he appreciates the hard work of **SEN. GROSFIELD** and **SEN. KEATING** in being tenacious in trying to render these funds back to a more appropriate destination for which they were entitled. These funds have been bled away from the purpose for which they were intended. He encourages a DO PASS recommendation.

Jill Andrews, Montana Mining Association, spoke in support of the bill. They supported **SB 249** and hoped the committee will give a DO PASS recommendation.

Don Allen, Western Environmental Trade Association, spoke in support of the bill. He felt **Mr. Crowley** certainly stated well the need to get the right focus on where the money needs to be spent.

Russ Ritter, Montana Resources, spoke in support of the bill. They have always felt the **RIT** money needs to be spent on many of the items **SEN. GROSFIELD** articulated. They encouraged a DO PASS.

Tom Patten, Montana Groundwater Assessment Act, said they support the concept of the bill from their support of the Groundwater Assessment Program. Section 12 contingent voidance does do the job.

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 18.3; Comments : None.}

Questions from Committee Members and Responses:

SENATOR COCCHIARELLA is curious what money is being taken away from, that could be significant in this arena when the $925,000 is transferred from the General Fund? **SEN. GROSFIELD** stated almost $500,000 from DNRC Conservation and Resource Development Division and some permitting and interest money from Water Resources to **DEQ** enforcement. **SEN. COCCHIARELLA** questioned those monies would be gone and not spent there anymore? **SEN. GROSFIELD** stated that was right except on page 11, lines 10, 11 and 12. If those programs can be funded out of **HB 2**, then next legislative session the authority to spend them out of **RIT** is gone. They will be funded out of the General Fund. If they are not funded out of **HB 2**, they will be funded out of **RIT** until a future session when an alternate funding source is identified.

SENATOR TAYLOR wondered if this was going to be put down in a black hole or not. **SEN. GROSFIELD** stated he would rather not put this bill in a black hole and he would rather just work through the process as we go along on **HB 2.** This does depend on **SEN. KEATING'S** bill but this is following it by a week or two. **SEN. TAYLOR** asked if this would become a cat and dog or is there a possibility it will be funded? **SEN. GROSFIELD** stated in that sense it was probably a cat and dog in essence. If it does not get funded, then it only affects Section 4 of the bill. The remainder of the bill still works.

SEN. COLE asked if there would still be $600,000 going into the Groundwater Assessment account? **SEN. GROSFIELD** stated this bill only deals with tax proceeds. It does not deal with interest except for one mention to be consistent with **SB 49. Senate Bill 49** says there is $300,000 of interest income which goes to Groundwater Assessment and $300,000 of taxes. This bill says $666,000 total and is an increase of $66,000 over **SB 49.** That is the difference. **SEN. COLE** questioned if this bill is under the assumption the **RIT** tax will be continued? **SEN. GROSFIELD** stated page 11, line 16 & 17, says if **SB 249** does not pass, this whole bill goes on, if **SB 249** does pass then Section 1-9 of this act are void and the only thing left is Section 10 and 11 with direction for the grant program to prioritize funding for reclamation projects.

SENATOR McCARTHY questioned page 5, line 30, talking about the metal mines tax reserve fund in relation to school districts. How will this affect money going to school districts? **John Tubbs, DNRC,** said Section 6 is a technical section which does nothing to school funding and will stay the same. When the statute is amended (f) turns into (e), it is just tracking that

change. It has no effect on funding. **SEN. McCARTHY** said there will be no change in the money that is currently going into the school funding account? **Mr. Tubbs** said that was correct.

Closing by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER, stated trying to get agencies out of **RIT** and getting back to using that money for the purpose for which it was intended has been talked about for years. For years they have also talked about the concept of **SEN. KEATING'S** bill about should the tax be sunset or not. Any agency that has been funded using **RIT** has probably been thinking ahead and realizing that bill could well pass one session or another and they have been thinking about ways to get out of the **RIT.** This is the way. The question **SEN. TAYLOR** raises about if there will be $925,000 in **HB 2**? He is not certain but is going to try. He thinks it is time to do this and he urges the committee's approval.

{Tape : 1; Side : A; Approx. Time Counter : 18.3 - 27.3; Comments : None.}

HEARING ON SB 499

Sponsor: **SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER**

Proponents:

Mark Simonich, Director, Department of Environmental Quality
Steve Pilcher, Atlantic Richfield Company and City of Billings
Don Allen, Western Environmental Trade Association
Frank Crowley, ASARCO
John Bloomquist, Montana Stockgrowers Association
Cary Hegreberg, Montana Wood Products Association
Gail Abercrombie, Executive Director, Montana Petroleum Association

Opponents:

Jeff Barber, Montana Environmental Information Center

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER, presented **SB 499.** On Christmas Eve the Governor received a letter from the **Environmental Protection Agency** which stated comments on a number of changes made regarding our water quality standards and laws of the last number of years. Some comments dealt with statutory changes and some with rule changes. **EPA** said they were going to disapprove some of what has happened over the last number of years. Interestingly, **EPA** said, "the region especially wants to commend the state for developing nondegredation implementation procedures in the absence of detailed **EPA** requirements or national implementation guidelines and at a time when a majority of states lack this type of implementation methodology." In other words, they were acknowledging and appreciating that Montana has been a leader in this area as is the case in many areas. However, they went on to say they disapproved some areas of the changes we have made.

In early January, the Governor sent a letter back to **EPA** saying Montana would look at these suggested changes but also that Montana was concerned at the way this whole thing happened. He said, "I must also reluctantly add that I am greatly concerned with the manner in which **EPA** has acted in this matter. **EPA** has been fully aware of these particular statutes for many years and, in fact, often had representatives in the committee rooms when the various pieces of legislation were being considered. Throughout the process it has always been difficult to get **EPA** to indicate, up front, whether a particular legislative action was going to be acceptable. Now after the laws have been in place and in force for sometime, **EPA** has issued a decision of disapproval for some of the statutes. Most of the statutes subject to your recent disapproval action have been pending since August, 1994. Since that time agencies have issued permits, approved other types of action and even take enforcement actions in compliance with these very standards. Now at the beginning of the session **EPA** is demanding immediate change and we will have 90 days to favorably respond. In all fairness, **EPA** should have been discussing its concerns with the Department well in advance of the current legislative session." **EPA** wrote back and said his points were well taken.

This bill responds to the **EPA** letters of December 24 and January 26. It includes some statutory changes to clarify some of the items discussed in order to bring our water quality acts and rules into compliance. It does not address all the concerns.

Proponents' Testimony:

Mark Simonich, Director, Department of Environmental Quality, spoke in support of **SB 499** as per **EXHIBIT(nas41a02).**

{Tape : 1; Side : A; Approx. Time Counter : 27.3 - 44; Comments : None.}

Steve Pilcher, Atlantic Richfield Company and City of Billings, spoke hesitantly in support of **SB 499.** The recommendations, as proposed in this bill, are probably a reasonable compromise. He is willing to support it because it basically says those activities that require a permit are not statutorily exempt from the review process.

Don Allen, Western Environmental Trade Association, spoke in support of the bill. They support the approach the Department is taking in dealing with the other disapproved issues in those letters. They think this bill does a good job of pulling out those things that really need to be addressed statutorily. They think some of the other things can and should be worked out as the Department is planning.

He was concerned about **EPA's** letter demanding the legislature had to do something in 90 days. **WETA** does feel this is a good solution and support the Department in their approaches.

Frank Crowley, ASARCO, spoke in support of the bill. He finds it ironic **EPA** is taking Montana under a microscope. It is ironic that one of the few states that has tried to wrestle with this very difficult issue is now having its program hyper criticized like this. Some media and press have said Montana has a weak water quality program. Montana has a very stringent water quality program. He urged a DO PASS on this bill.

John Bloomquist, Montana Stockgrowers Association, stated nondegradaton exemptions are really the lynchpin of a workable nondeg policy. He echos **Mr. Crowley's** comments that a state that has stepped out and wrestled with nondegradation in how to make it a workable policy, was criticized by **EPA.** The changes in this bill are tweaks to satisfy the concerns of **EPA.** He is disappointed **EPA** waited until the week before the session was going to start to take the action they did.

He wants to applaud the state for the position they have taken regarding **EPA's** disapproval of 75-5-308. It is hard to imagine that short term authorizations cannot be a part of any state's water quality policy.

He also applauds the state on the position they have taken regarding the 310 permit process. This is probably one of the most environmentally beneficial programs for reviewing riparian management and stream restoration projects. Naturally some sediment will be stirred up with some short term accedences of water quality standards. He urged a DO PASS recommendation.

Cary Hegreberg, Montana Wood Products Association, spoke in support of this bill and thanked **DEQ** and **SEN. GROSFIELD** for bringing this credible response to **EPA's** concerns to the legislature. He also thanked **DEQ** legal staff for the excellent job they are doing in tending the state's interest in the litigation which is pending before District Court which relates to this issue. They think the Department has done a good job of bringing this issue before the legislature where it needs to be resolved without caving in to some of the irresponsible kinds of concerns **EPA** has brought forward.

Gail Abercrombie, Executive Director, Montana Petroleum Association, specifically addressed the accommodation for the **EPA's** disapproval on the oil and gas drilling on page 6, line 15 of this bill. When these exemptions were brought forward to be put into statute it was to avoid double permitting. The Board of Oil and Gas, in their drilling permits and restoration, do not allow any discharges to surface water. Therefore, the addition of the words "that do not result in discharges to surface water" is actually the current practice in place with Oil and Gas. They support the bill.

Opponents' Testimony:

Jeff Barber, Montana Environmental Information Center, stated their objection is not the bill itself but it fails to address a number of other issues that **Mr. Simonich** brought up that were disapproved by **EPA** in the blizzard of letters that has flown around over the past couple of months. They have problems with the sections dealing with categorical exclusions. On page 2, line 13, it basically says the Board of Environmental Review can set the criteria for what is nonsignificant and that is what **EPA** objected to. They did not like that it was put in statute and thought the Board should go through a process to determine what is significant and what is not. They believe that would be a more appropriate way to address what **EPA** said in its letter to eventually start the process of deleting categorical exclusions through the Board.

This bill is a missed opportunity to address a number of other things **EPA** disapproved. They were not too happy about the timing of **EPA's** letter either.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 20.2; Comments : None.}

Questions from Committee Members and Responses:

SENATOR COLE questioned if the items disapproved by **EPA**, which are not underlined, are going to be dealt with later? **Mr. Simonich** stated they are working with **EPA** to see if they can find a reasonable solution to those. They are in basic disagreement on a number of them. Ultimately, they may suggest some language for approval but, at this point in time, this is as far as they could get as they recognized they needed to have a bill moving.

Special Guest:

John Wardell, Director of EPA in Helena, did not have prepared comment. He had some disagreements from the perception offered that **EPA** has somewhat blind sided the state and this is an eleventh hour surprise. These discussions go back many, many months. Nevertheless, what he has offered on behalf of **EPA** is to work with the state to come up with language where there is presently disagreement. Clearly, there is ongoing litigation and whether this bill will help satisfy and settle that he did not know. He offered to answer questions but due to litigation and some of the other issues he preferred to keep them to a minimum.

Closing by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER, stated he appreciated the agency's approach as well to short term authorizations and 310 permits, etc. Before he got into the Senate he spent about twelve years as a Conservation District Supervisor and he remembers dealing with a number of 310 permits. Through chairing the Water Resource Committee and eventually becoming President of Montana Association of Conservation Districts, he became familiar with how the 310 process works around the state. In the mid-80's they addressed the short term authorizations or 3A permit. They tried to figure out how to put a 3A permit on the back of the 310 permit so there would not have to separate inspections and separate people coming out, etc. Fish, Wildlife & Parks biologists were given authority to sign off on 3A authorizations for short term accedences of water quality standards. This is a state professional fisheries biologist doing that and they have received training for it. They do not have to sign that permit, but in order for the permittee to get the 310 permit, they have to deal with the 3A question. There are plenty of safeguards in place already. Another side benefit to the program is there has been 20-25 years of education of water quality concepts to people that live in the

country. Education regarding how should we act with our irrigation structures, are there better ways to do it and more environmentally sound methods to do it. He appreciates the Department for standing their ground on this issue because it has been a very effective program.

This legislation does provide for an appropriate answer to the **EPA** letters. He is pleased **Mr. Wardell** is here.

He pointed out there is a lot of good news in these letters and if there has been some apprehension about whether or not **EPA** is going to disapprove this or that, we now have it on record that **EPA** approves most of what we have done with the exception of some narrow areas most of which are addressed in this bill. If everyone continues to work together on these issues, hopefully we will end the session with a good resolution on this issue.

{Tape : 1; Side : B; Approx. Time Counter : 20.2 - 34.8; Comments : None.}

EXECUTIVE ACTION ON SB 313

Motion/Vote: **SEN. MAHLUM** moved that **SB 313 BE TABLED. Motion carried 9-2** with **SEN. MILLER AND SEN. COCCHIARELLA** voting no.

EXECUTIVE ACTION ON SB 411

Motion: **SEN. COLE** moved that **SB 411 DO PASS.**

Motion/Vote: **SEN. COLE** moved that **SB 344 AMENDMENTS SB041101.ALM DO PASS. Motion carried 11-0. EXHIBIT(nas41a03)**

Motion/Vote: **SEN. GROSFIELD** moved that **SB 411 DO PASS AS AMENDED. Motion carried 11-0.**

{Tape : 1; Side : B; Approx. Time Counter : 34.8 - 44; Comments : None.}

EXECUTIVE ACTION ON SB 462

Motion: **SEN. GROSFIELD** moved that **SB 462 DO PASS.**

Motion: **SEN. GROSFIELD** moved that **SB 462 AMENDMENTS SB046201.ALM DO PASS. EXHIBIT(nas41a04)**

Vote: Motion **carried 11-0.**

Motion: **SEN. GROSFIELD** moved that **SB 462 AMENDMENTS SB046202.ALM DO PASS. EXHIBIT(nas41a05)**

Vote: Motion **carried 11-0.**

Motion/Vote: **SEN. GROSFIELD** moved that **SB 462 DO PASS AS AMENDED. Motion carried 10-1** with **SEN. WILSON** voting no.

EXECUTIVE ACTION ON SB 465

Motion/Vote: **SEN. MILLER** moved that **SB 465 BE TABLED. Motion carried 10-1** with **SEN. COCCHIARELLA** voting no.

EXECUTIVE ACTION ON SB 492

Motion/Vote: **SEN. GROSFIELD** moved that **SB 492 DO PASS. Motion carried 11-0.**

EXECUTIVE ACTION ON SB 499

Motion: **SEN. GROSFIELD** moved that **SB 499 DO PASS.**

Motion: **SEN. GROSFIELD** moved to amend **SB 499 PAGE 2, LINE 18 BY STRIKING "IDENTIFIABLE".**

Vote: Motion **carried 11-0.**

Motion: **SEN. MAHLUM** moved that **SB 499 DO PASS AS AMENDED.**

Discussion:

SENATOR COCCHIARELLA stated EQC had considered an emergency meeting to respond to the letter from EPA and further questioned if we were not to pass this bill what else is out there to respond and fix the problem in dealing with EPA's letter? **SEN. GROSFIELD** stated there was not other legislation in the works to deal with this. Some of the issues could be dealt with in terms of rule but some do need statutory tweaking.

Vote: Motion **carried 9-1** with **SEN. WILSON** voting no.

EXECUTIVE ACTION ON SB 344

Motion: **SEN. MILLER** moved **SB 344 BE RECONSIDERED FOR PURPOSES OF AMENDMENT.**

Motion/Vote: **SEN. TAYLOR** moved **ADJOURN MEETING. Motion failed 4-7.**

Vote: Motion **SB 344 BE RECONSIDERED FOR PURPOSES OF AMENDMENT carried 6-5** by Roll Call Vote with **SENATORS MAHLUM, COCCHIARELLA, ROUSH, TAYLOR AND WILSON** voting no.

Motion: **SEN. MILLER** moved that **SB 344 AMENDMENT SB034401.ALM DO PASS. EXHIBIT(nas41a06)**

Discussion:

SENATOR TAYLOR stated he commended **SEN. MILLER** for trying. He was not personally against mining. There are some very good mining companies and they should be taken care of. This is a bad move because it takes the people out of the process - the people that vote for the legislators. If **CI-75** is overturned by the Courts next week, should this be put on the ballot again or should the people go out and get the signatures? The mining industry has the ability to go out and get their own signatures and create their preferences. He feels it is bad policy to use legislators as that instrument because the people are going to lose confidence in the logic of Helena.

SENATOR KEATING stated this bill does send it out for a vote of the people. It is a referendum and the people will get to vote on it. However, this time they will hear both sides of the story and they might be better informed in making a decision. They could sustain **I-137** and if they do, after having all the information, so be it. He feels they should have the opportunity to hear both sides.

SENATOR MILLER stated contraire to **SEN. TAYLOR,** this bill is exactly the opposite. The purpose of the amendment is to put it to the vote of the people. Let the people make the decision if they indeed want to eliminate mining of this type in Montana.

SENATOR WILSON feels we are being quick triggered and arrogant to step in front of the people and decide this issue among politicians instead of the people. There is nothing wrong with what we are doing but he feels the mood of the folks out there will turn even worse toward this assembly if we go down this road. He strongly resists this amendment.

SENATOR GROSFIELD stated he appreciated **SEN. MILLER** bringing this issue back. He has grave concerns about the lack of adequate information in the campaign and the inappropriateness of sound byte policy making. Article 3, Section 5 of the Constitution deals with referendums. That portion of the Constitution talks about the people being able to take an act that the legislature has passed and refer it. There is a mechanism in place for them to suspend an act the legislature passes which is entirely Constitutional and similar to what we are doing here. It will be in place for a couple of years and then discussed and voted on. He feels what the Committee is doing is entirely responsible by saying we will go out and discuss this issue in the full light of day without **I-125** limiting anyone's participation. The votes on these bills are tough votes for all the committee members but he stands on the side of informed, responsible, thoughtful public policy making.

SENATOR COLE feels this amendment is fair and equitable and is going to allow the opportunity to really take a look at what **I-137** is about. He feels there was a one-sidedness before. It will still be two years down the road before the vote is taken. **SENATOR KEATING** stated people referring a statute not passed by the legislature did occur on the income tax increase three sessions ago. The people objected to the passage of that law by the legislature, they got it on a referendum, put it on the ballot and killed it so it works both ways. Most of the legislators feel that people did not have the information they should have had in order to make their decision the last time around.

SENATOR WILSON stated this was an 11th hour, last ditch effort because all else failed. For us to characterize it as anything else is not right. This is a last ditch effort to make what we are doing here sound the best. What was proposed in these bills initially did not look good. He thinks most of us know it and this is a quick little way to slip it by the public and make it look good.

SENATOR CRISMORE stated **SEN. WILSON** may be right but he does not think it was the first time nor the last time that all the efforts are not used for trying to pass some legislation.

SENATOR GROSFIELD stated nothing was being slipped by the public. The public is in the room and newspaper reporters in the room. This issue is going to be like any other issue that goes through the legislature with lobbying for and against. If it passes it will go through another House with more hearings. There is nothing hidden about what is being done here. It is right out in the full light of day where it should be.

Vote: Motion that **SB 344 AMENDMENT SB034401.ALM DO PASS carried 6-5** by Roll Call Vote with **SENATORS MAHLUM, COCCHIARELLA, ROUSH, TAYLOR AND WILSON** voting no.

Motion/Vote: **SEN. MILLER** moved that **SB 344 DO PASS AS AMENDED. Motion carried 6-5** by Roll Call Vote with **SENATORS MAHLUM, COCCHIARELLA, ROUSH, TAYLOR AND WILSON** voting no.

EXECUTIVE ACTION ON SB 345

Motion/Vote: **SEN. KEATING** moved **SB 345 BE RECONSIDERED. Motion carried 6-5** by Roll Call Vote with **SENATORS MAHLUM, COCCHIARELLA, ROUSH, TAYLOR AND WILSON** voting no.

Discussion:

SENATOR GROSFIELD stated the bill, as it came off the table, had some amendments and he believed the amendments stayed with it. They were pointed to the **I-137** and Golden Sunlight issue. A glitch in the previous amendment had been pointed out to him and he wanted to strip the old amendments and replace them with new to correct a technical error. The new amendments would still protect Golden Sunlight.

Motion/Vote: **SEN. GROSFIELD** moved **TO STRIP AMENDMENTS SB034501.ALM from SB 345. Motion carried 11-0.**

Motion: **SEN. GROSFIELD** moved that **SB 345 DO PASS.**

Motion: **SEN. GROSFIELD** moved **SB 345 AMENDMENTS SB034501.ALM WITH TWO AMENDMENTS DO PASS. EXHIBIT(nas41a07).**

Discussion:

SENATOR GROSFIELD stated these amendments exempt Golden Sunlight from **I-137** and any amended permit that expands the mine operation for the life of the mine. Golden Sunlight is out as well as any other mine that was operating on November 3, 1998, re: Line 24.

Vote: Motion that **AMENDMENTS SB034501.ALM WITH TWO AMENDMENTS DO PASS carried 9-2** with **SEN. TAYLOR AND SEN. WILSON** voting no.

Motion: **SEN. COLE** moved that **SB 345 AMENDMENTS SB034505.ALM DO PASS. EXHIBIT(nas41a08)**

Discussion:

SENATOR MILLER stated part of the amendments in the title and #3 are identical and are not needed.

SENATOR GROSFIELD stated the committee should give **Larry Mitchell** leeway to coordinate the two amendments.

Vote: Motion that **SB 345 AMENDMENTS SB034505.ALM DO PASS carried 6-5** by Roll Call Vote with **SENATORS MAHLUM, COCCHIARELLA, ROUSH, TAYLOR AND WILSON** voting no.

Discussion:

SENATOR MILLER stated he was going to vote for this bill not because he liked the main bill but because he liked the amendments. The bill sponsors said they never intended for the mines under operation to be affected. These amendments would allow those to continue and would only stop operations in the future. He still does not like the policy of county to county regulation on pollution issues and he intends to work, as this goes through, to either find another place for these amendments to go or do something county by county. He intends to vote for it today and put it out on the floor and see where it goes from there.

SENATOR WILSON opposes the bill. The bottom line is you cannot tell a watershed to respect a county line. He questions again where the local option policy ends. This is terrible public policy and he hopes this bill does not make it completely through the process.

SENATOR CRISMORE stated they are trying to get a mine in operation in his area on the Clark Fork. It is very close to the Idaho line and he does not feel Idaho should be able to tell us we can't mine in Montana because they think the water does run through Idaho too.

SENATOR MILLER questioned the issue of the vote of the people by the county. He does not find in statute where it would be required to end up in a vote of the people. It can go to a vote of the people but does not require it, is that right? **Larry Mitchell** stated the County Commissioners can adopt this by ordinance with 2 out of 3 votes. However, the procedure for adopting the ordinance is subject to repeal of the vote of the people or the commissioners may refer it to a vote of the people but they are not required to. The people can require that it be put on the ballot and then can repeal and amend it. **SEN. MILLER** said he was not sure it was clear at the hearing that the vote of

the people would have to come then by doing an initiative to repeal the actions of the commissioners. He does not like the verbiage in that section but he is not going to withhold his vote because of it.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 44; Comments : None.}

SENATOR TAYLOR stated his concern with this bill was that two people could decide and then the people have to go out and get a referendum to overturn those two people. We are setting it up so a few are going to decide what many disagree with.

SENATOR ROUSH stated when the vote is cast, this committee must consider the future of this piece of legislation in the State of Montana. On a local option basis, what is the liability for development in one county when they use cyanide or something worse than cyanide to operate with and what is the liability to the next county for pollution?

SENATOR GROSFIELD stated he did not agree with that at all. This bill allows the county to vote on whether or not they want a particular project in their area, they are not voting on whether or not to nullify the Title 75 Water Quality Act, Title 62 Mining Act or air quality or water quality laws. All those laws are still in place. This bill does not nullify environmental requirements.

SENATOR McCARTHY stated she lives in the affected area and feels her people are more conscious about how to do a cleanup and how the technology has improved in the last 100 years. They are working desperately to make sure no other area is damaged like what is now being cleaned up. She thinks it is very important that if those people living there voted they would want to go forward can.

SENATOR TAYLOR suggested a conceptual amendment to address **SEN. MILLER'S** concerns stating it would take 2/3 vote of the electors voting on the proposal to enact an ordinance. He is very concerned that two county commissioners out of three could put this on and the people have to go out and create a referendum to get the vote overturned.

SENATOR COLE stated he was hesitant to have an amendment due to insufficient time to study it.

SENATOR GROSFIELD stated if **SENATOR TAYLOR** wanted to make an amendment he could.

Motion/Vote: **SEN. TAYLOR** moved that **SB 345 CONCEPTUAL AMENDMENT FOR 2/3 VOTE OF ELECTORATE TO ENACT ORDINANCE DO PASS. Motion carried 6-5** by Roll Call Vote with **SENATORS CRISMORE, COLE, GROSFIELD, KEATING AND McCARTHY** voting no.

Discussion:

SENATOR GROSFIELD asked what the amendment did on Line 12 to the County Commissioners and **SEN. TAYLOR** stated it was eliminated.

SENATOR KEATING suggested that at some point this be refined so people could do this by initiative or the County Commissioners could by referendum refer a vote to the people. That way the County Commissioners can exercise their authority for an ordinance subject to a vote of the people. **SEN. TAYLOR** responded he had no problem with that as long as it was a 2/3 vote.

Motion/Vote: **SEN. GROSFIELD** moved that **SB 345 DO PASS AS AMENDED. Motion carried 6-5** by Roll Call Vote with **SENATORS MAHLUM, COCCHIARELLA, ROUSH, TAYLOR AND WILSON** voting no.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 14; Comments : None.}

ADJOURNMENT

Adjournment: 5:50 P.M.

_____
SEN. WILLIAM CRISMORE, Chairman

_____
JYL SCHEEL, Secretary

WC/JS

EXHIBIT(nas41aad)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **VICE CHAIRMAN CINDY YOUNKIN**, on March 19, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Bill Tash, Chairman (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 666, SB 468, SB 499, 3/16/1999
Executive Action: HB 666, SB 468, SB 499, SB 383, SB 429

HEARING ON HOUSE BILL 666

Sponsor: Rep. Karl Ohs, HD 33, discussed the bill. He said he decided to pull the bill because the issues were very complicated and the time was limited. All interest parties agreed to work on this during the interim.

EXECUTIVE ACTION ON HOUSE BILL 666

Rep. Ohs **MOVED TO TABLE.** The question was called. The motion **PASSED** unanimously. ***{Tape : 1; Side : A; Approx. Time Counter : 0 - 2.4}***

HEARING ON SENATE BILL 468

Sponsor: Sen. Vicki Cocchiarella, SD 32, presented the bill. The bill would re-authorize the dams on the Clark Fork River. This bill would temporarily close the basin of the Clark Fork River giving the parties involved enough time to negotiate water rights. She explained the big deal with this issue. If Washington Power called in all its junior water rights, nobody would get any water. The reason for the bill and the slow down in the process is to protect Montanans water rights. She pointed out this closure did not include ground water, domestic use, municipal, livestock or emergency appropriations. Almost anything can continue to happen. However, big projects that require a lot of water will be stopped from happening. ***{Tape : 1; Side : A; Approx. Time Counter : 2.4}***

Proponents: Bud Clinch, Director of Department of Natural Resources and Conservation. He explained the bill was the result of an agreement between Montana and Avista Corporation. He presented written testimony. **EXHIBIT(nah62a01)** ***{Tape : 1; Side : A; Approx. Time Counter : 7.4 - 14.1}***

Bob Lane, Chief Legal Counsel for Fish, Wildlife and Parks, presented written testimony from Director Pat Graham in support of the temporary closure. **EXHIBIT(nah62a02)** ***{Tape : 1; Side : A; Approx. Time Counter : 14.5}***

Art Compton, Department of Environmental Quality, spoke in favor of the bill. He said the DEQ's involvement on the Avista re-licensing stems from the fact that Noxon Rapids Dam is covered under the Montana Major Facilities Siting Act. ***{Tape : 1; Side : A; Approx. Time Counter : 14.5 - 17.5}***

Tom Ebzery, an attorney from Billings representing Avista Corporation which was formerly Washington Water and Power, spoke in favor of the bill. He pointed out the collaborative process was unique and would probably be a model for future licensing. ***{Tape : 1; Side : A; Approx. Time Counter : 17.5 - 19.1}***

Mike Murphy, Montana Water Resources Association, spoke in support of the bill. ***{Tape : 1; Side : A; Approx. Time Counter : 19.1 - 19.4}***

Jerry Wells, representing Montana Council for Trout Unlimited, spoke in support of SB 458. He said their council was very involved in the re-licensing. He felt the Avista Corporation was a wonderful corporation to work with in their willingness to step forward and deal with fishery issues. They have put money into restoration of fish species. ***{Tape : 1; Side : A; Approx. Time Counter : 19.4 - 20.3}***

Holly Franz, representing the Montana Power Company and the Upper Clark Fork River Basin Steering Committee, was in support of the bill. She called this "the new way for re-licensing." ***{Tape : 1; Side : A; Approx. Time Counter : 20.3 - 21.2}***

Opponents: None.

Questions from Committee Members and Responses: ***{Tape : 1; Side : A; Approx. Time Counter : 21.6 - 28.6}***

Closing by Sponsor: Sen. Cocchiarella closed. ***{Tape : 1; Side : A; Approx. Time Counter : 27.6 - 30.5}***

EXECUTIVE ACTION ON SENATE BILL 468

Rep. Bitney **MOVED DO CONCUR.** He distributed the moratorium agreement and a copy of a fax to Tom Matthews, Chief Executive Officer of Avista Corporation from Governor Racicot. **EXHIBIT(nah62a03) EXHIBIT(nah62a04)**

The question was called. The motion **PASSED** unanimously. ***{Tape : 1; Side : A; Approx. Time Counter : 30.5 - 32.9}***

HEARING ON SENATE BILL 499

Sponsor: Sen. Lorents Grosfield, presented SB 499. He described the need for the bill stemming from a review of the Montana Water Quality laws. The bill addressed concerns that were identified

in a December 24, 1998 letter from the EPA. ***{Tape : 1; Side : A; Approx. Time Counter : 32.9 - 41.5}***

Proponents: Mark Simonich, Director of Department of Environmental Quality, distributed a list summarizing items that had been disapproved by EPA. **EXHIBIT(nah62a05)** He presented written testimony. He said the actions with the bill do satisfy EPA issues. He described issues that the state did not agree with. **EXHIBIT(nah62a06)** ***{Tape : 1; Side : A; Approx. Time Counter : 41.7 - 51.2}***

John Blomquist, representing Montana Stockgrowers Association, spoke in favor of the bill. He felt the standards disapproved by EPA under the Montana Water Resource Act were technical and hypercritical. He presented an amendment which addressed how the department would deal with the short term authorization of the 308 permit. **EXHIBIT(nah62a07)** He distributed another amendment. This was necessary because water users and water right holders worked hard on dealing with these non degradation exemptions. It is important that non degradation exemptions continue to recognize the use of water established under a water right or under a permit. **EXHIBIT(nah62a08)** ***{Tape : 1; Side : A; Approx. Time Counter : 51 - 61}***

Don Allen, Western Environmental Trade Association, spoke in support of the bill and the amendment. He described the potential impacts of a lawsuit, referred to by Sen. Grosfield. If Montana were to loose the suit, the impacts would be far reaching and affect a wide range of WETA members. It was important that this not further disrupt the economic activities of the state. The lawsuit was filed in Colorado. It wasn't just the challenge by environmental groups but the request in the lawsuit for a cessation of activities on particular things they might think needed to be stopped. This could impact various endeavors in the economy of the state should this happen here. ***{Tape : 1; Side : A; Approx. Time Counter : 61 - 63.8}***

Steve Pilcher, representing the City of Billings, spoke for the bill. He reminded the committee of the ugly debates in the 93 and 95 Session over the Montana Water Quality Act. These changes proposed deal with the non-degradation exemptions. The language will not result in a major change in the way the regulated community will be dealt with. He felt this worked four years ago and shouldn't be changed but would agree with it as long as it allowed to continue to regulate and protect the aquatic life. ***{Tape : 1; Side : B; Approx. Time Counter : 0.3 - 2.3}***

Mike Murphy, representing the Montana Water Resources Association, said they wanted to go on record in support of SB

499. He felt these were important issues that needed to be addressed. They were in support of the amendments. ***{Tape : 1; Side : B; Approx. Time Counter : 2.3 - 3}***

Cary Heggreberg, Montana Wood Products Association, spoke in support of the bill. He pointed out Montana was vulnerable to litigation over water quality laws. The association was assisting the state's interests in litigation in water quality concerns. Litigation will probably continue in trying to shut down good, viable natural resource development activities on the basis of water quality issues. ***{Tape : 1; Side : B; Approx. Time Counter : 3 - 4.8}***

Opponents: None.

Questions from Committee Members and Responses:

Rep. McGee asked Sen. Grosfield if this bill had anything to do with past legislation. Sen. Grosfield answered that is does deal with some past legislation but that it does not make up the bulk of the bill. Rep. McGee asked about the lawsuit. Director Simonich replied the suit was filed last year by Earth Justice on behalf of a variety of environmental groups against the Environmental Protection Agency. This forced EPA to review its standards in Montana and then to promulgate federal standards in Montana. Rep. McGee wanted to know what happens if this bill is not passed. Claudia Massman, Attorney for DEQ answered, if it doesn't pass EPA will promulgate Federal rules. ***{Tape : 1; Side : B; Approx. Time Counter : 4.3 - 12.6}***

Rep. Ohs asked Simonich to discuss page 3 of the amendments. Amendment #7, was not in the law before and Rep. Ohs wanted to know if it was something he had negotiated. It was answered that amendment #7 was substantively negotiated. ***{Tape : 1; Side : B; Approx. Time Counter : 12.6 - 17.3}***

Rep Ewer had a question for Mark Simonich. Rep. Ewer wanted to know if Mark had reviewed the amendments from the Montana Stock Grower's Association. Simonich replied, that he has not seen it. He was made aware of it that afternoon. The intent of the amendment is very clear and he supports that. The amendments were not intended to provide a threat to Montana Water Rights. Rep. Ewer asked about the fear of mixing zones. Simonich is not sure that these changes even addresses mixing zones.
{Tape : 1; Side : B; Approx. Time Counter : 17.3 - 21}

Rep. Dale asked a question of Simonich. Wanted to know if the process would be more difficult or would the standards be higher.

Simonich did not feel this would raise or lower standards. ***{Tape : 1; Side : B; Approx. Time Counter : 21 - 22.7}***

Rep. Harper asked Simonich what level of approval they have from the EPA on the provisions of these bills. If the committee passes these will they go back in front of the EPA. The EPA had sent a letter to Simonich and it basically tells them that the actions by Simonich are acceptable to the EPA. All of the disputed areas are supported by EPA. ***{Tape : 1; Side : B; Approx. Time Counter : 22.7 - 25.6}***

Rep. Younkin asked for a copy of the letter that Simonich received from the EPA. Simonich said he would provide it. (See unnumbered exhibit) ***{Tape : 1; Side : B; Approx. Time Counter : 25.6 - 25.8}***

Rep. Hurdle asked Simonich a question regarding the short term accedence of standards. Simonich said they are not dealing with the degree of turbidity but categorical exclusions. Abe Harpsted, DEQ, tried to answer the question. ***{Tape : 1; Side : B; Approx. Time Counter : 25.8 -32.0}***

Closing by Sponsor: Sen. Grosfield closed. He described a historical perspective. In 1975, SB 310 was the first permanent process for local activities. In the mid 80's they negotiated for 3A short-term exclusion authorization. SB 310 approved 3A authorization and in 1998 it was approved by EPA. On December 24, 1998 the EPA decided they didn't like it, as detailed in their letter. The 3A process has worked very well, and that is why there has been a lot of resistance to the EPA changing the 3A authorization. Sen. Grosfield then gave some background on water rights. Sen. Grosfield then read parts of the December 24, 1998 letter from the EPA. ***{Tape : 1; Side : B; Approx. Time Counter :32.4- 43.7}***

EXECUTIVE ACTION ON SENATE BILL 383

Rep. Ohs **MOVED DO CONCUR.** He distributed a memorandum addressed to Senator Hargrove from Mary Vandenbosch which provided questions and answers regarding SB 383. **EXHIBIT(nah62a09)** He distributed an amendment, #38305, **EXHIBIT(nah62a10)**, and a memorandum regarding the grey bill, **EXHIBIT(nah62a11)**. Rep. Ohs **MOVED** the amendment. ***{Tape : 1; Side : B; Approx. Time Counter : 46.3 - 48.1}***

Mary Vandenbosch explained the amendments. A growth policy has to be adopted before the special cluster development regulations

could be developed. The amendment would require the growth policy to evaluate the effect of the subdivision in growth areas on the public interest criteria. ***{Tape : 1; Side : B; Approx. Time Counter : 48.5 - 50.7}***

The question was called on the amendment. The motion **PASSED** 16-4 with Reps. Gutsche, Hurdle, Tuss and Erickson voting no.

Rep. Ohs requested that Mona Jamison explain amendments 38307. **EXHIBIT(nah62a12)** ***{Tape : 1; Side : B; Approx. Time Counter : 50.7 - 56.4}***

Mona Jamison said the purpose of these amendments was to make certain that if you do not do a cluster development in a growth area and you choose not to do the higher density, but do a regular subdivision you cannot be disapproved because you didn't want to do cluster development. ***{Tape : 1; Side : B; Approx. Time Counter : 56.4 - 57.4}***

Mary Vandenbosch explained the amendments. She pointed out that in order to do these special cluster development regulations, referring to line 7, line one, they must have adopted a growth policy. This is in the bill in its current form. ***{Tape : 1; Side : B; Approx. Time Counter : 57.4 - 61.8}***

Rep. McGee **MOVED** the 38307 amendments. The question was called. The motion **PASSED** 16-4 with Reps. Gutsche, Hurdle, Tuss and Erickson voting no.

Rep. said there was one more set of amendments. He **MOVED** amendments 38308. **EXHIBIT(nah62a13)** He explained these amendments were in response to some of the questions that came out of committee. He asked Mona Jamison to explain them. Jamison said if incentives are to be provided for clustering and preserving open space and agricultural land, there would still be a master plan requirement. The protest provision was addressed by taking language from the zoning law that says that 40% of the people within the area protest, they have a right to ask for a hearing before the County Commissioners on those specific areas. ***{Tape : 2; Side : A; Approx. Time Counter : 0.3 - 7.2}***

Rep. Erickson pointed out that 40% of the real property covered by the Master Plan was a high standard. Mona Jamison said this was current law and the intent was to provide a similar structure rather than create a new one. The county protest in existing law is 40%. For municipalities and other local governing bodies, it is 20%. Rep. Erickson noted these numbers were used in zoning rather than Master Plans. Jamison pointed out there was flexibility on that number. However, this was a pre-existing,

statutory guide. The percentage could be lowered. The important issue was the protest availability. Rep. Younkin pointed out this was zoning language. Master Plans normally have no protest provisions. If someone doesn't like it they have to go through the petition process to get it on the ballot to get rid of it. ***{Tape : 2; Side : A; Approx. Time Counter : 7.2 - 10}***

Rep. Erickson asked who was counted in the 40%. Rep. Younkin replied it was 40% of the owners of the real property within the area to be zoned. Rep. Erickson pointed out that Master Plans covered very wide areas so it would take a very large number of people who would have to protest versus a zone. ***{Tape : 2; Side : A; Approx. Time Counter : 10 - 10.9}***

Rep. Story said he was concerned about this, also. It was his understanding that a Master Plan covered the whole county. You would need 40% of the people in the county and a cluster development would be dealing with a fairly small area of property. You would be more affected by the school district you were in or maybe that property and the adjoining neighbors. He suggested amending the area affected rather than the 40%. ***{Tape : 2; Side : A; Approx. Time Counter : 10.9 - 12.2}***

Rep. Wagner **MOVED TO TABLE.** He felt the bill needed more work. The motion **PASSED** 15-5 with Reps. Story, Ohs, Younkin, Stovall and Dale voting no.

EXECUTIVE ACTION ON SENATE BILL 429

Rep. Dale **MOVED TO RECONSIDER SB 429,** to move it off the table. The question was called. The motion **PASSED** with one no vote by Rep. McGee. ***{Tape : 2; Side : A; Approx. Time Counter : 14}***

Rep. Dale **MOVED DO CONCUR** on SB 429. He explained this could be a matter of safety. This applies to a division of land that is already leased or rented for the purpose of aeronautics.

Rep. McGee pointed out pre-planning was needed but there was nothing preventing the county from zoning what they wanted to zone. They could plan ahead but they didn't. He said he understood the reasons behind the bill but the county creates the subdivision regulations and they apply to individuals but not to themselves. ***{Tape : 2; Side : A; Approx. Time Counter : 14 - 21.2}***

Rep. Harper asked if subdivision laws were proper for the organizational layout of an airport. McGee replied the subdivision laws were not adequate but Master Plans and zoning

applied. ***{Tape : 2; Side : A; Approx. Time Counter : 21.2 - 22.2}***

The question was called. The motion **PASSED** 14-6 on a roll call vote.

ADJOURNMENT

Adjournment: 5:34 P.M.

_____
REP. CINDY YOUNKIN, Vice Chairman

_____
DEB THOMPSON, Secretary

BT/DT

EXHIBIT(nah62aad)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on March 22, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:
Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 362, SB 411, 3/19/1999

Executive Action: SB 411, SB 362, SB 499, SB 321, SB 412, SB 462, SB 345, HB 158, SB 383

{Tape : 1; Side : A; Approx. Time Counter : 0 - 64; Comments : Tape 1, taped on 4.8 tape speed. All others 2.4 speed.}

HEARING ON SENATE BILL 362

Sponsor: Sen. Tom Keating, SD 5, presented SB 362. This bill was at the request of the Montana Land and Mineral Owners Association along the high line. He said there were some areas of the state that had shallow gas wells. Once in a while a gas well will reach its commercial limit but there is still enough gas left in the reservoir that it will heat a dwelling or farm stead buildings. It may have enough pressure to last five to ten years longer. The landowner can take over the well from the operator rather than the operator plugging the well and abandoning it. He noted these were low pressure wells and did not have much danger. In order for the operator to release the well to the landowner, he has to get a release from his bond and liability from the plugging of the well. To do that they go to the Oil and Gas Commission and file a report and the landowner assumes the liability for the plugging of the well. A non-commercial well has to provide a CD of $5,000 or a lien on the property. In order to facilitate those landowners to take over the well, the statute needs amended so that person can purchase a surety bond as the backing for the plugging of the well. The bond is there, the premiums are paid, until such time as the well needs to be plugged and abandoned. In that case, the landowner then abandons and plugs the well according to state requirements and the surety bond is released. If for some reason the landowner doesn't plug the well, then the Oil and Gas Commission can foreclose on the bond and have sufficient money to properly plug the well. This bill would facilitate the landowner with a third method of funding the bonding that he needs in order to take title to the well. ***{Tape : 1; Side : A; Approx. Time Counter : 1 - 6.4}***

Proponents: Patrick Montalban, representing the Montana Oil and Gas Association, spoke in favor of the bill. He said this bill affected the high line area. It is good for the landowner and the state small independent oil and gas companies. ***{Tape : 1; Side : A; Approx. Time Counter : 7.8 - 8.9}***

Opponents: None.

Questions from Committee Members and Responses: Rep. Story asked about the cost of a surety bond. Mr. Montalban replied you could no longer buy a surety bond in the state of Montana in the oil and gas business. It has to be a cash bond. The bill would allow putting up the farm for collateral for the bond, which is a key part of the bill. ***{Tape : 1; Side : A; Approx. Time Counter : 9.2 - 10}***

Rep. Story asked what the purpose of the bill was if a surety bond could not be purchased. Sen. Keating said the Board of Oil and Gas stated that the surety bond was available and could be purchased. ***{Tape : 1; Side : A; Approx. Time Counter : 10 - 11.5}***

Rep. Eggers asked about the surety bond or the certificate of deposit if it was merely for the purpose of capping the well. Sen. Keating replied it was for plugging the well. It is to make sure that the well is properly plugged and the surface is reclaimed. Rep. Eggers asked if the bond acted like an indemnity for any type of property damage or injuries or other obligations that might have occurred by the previous owner. Sen. Keating replied it was simply for reclamation. ***{Tape : 1; Side : A; Approx. Time Counter : 11.5 - 12.4}***

Rep. Erickson asked about the background data. Sen. Keating replied some of these had been used for twenty years and the reservoirs were being depleted. As the reserves decline, the pressures decline. All of the wells are attached to a gathering system. The gas will flow out of the well through a baffle into the gathering line. Sometimes there are well that have two to three times the pressure of these exhausted wells and as a consequence there is not enough pressure in the wells to open the baffle and get into the pipe. It is useless to the operator. The operator will then plug and abandon the well to get rid of the surface liability and paying for trails and damages, entrance into the well site. This is close enough to a farmstead that the rancher can use that gas for another four or five years. Because the gas fields are declining, there would be more of these wells available. Whether their proximity is to a farmstead to make it economically viable for the landowner to use that is hard to determine. There will be a few of these but not a lot. ***{Tape : 1; Side : A; Approx. Time Counter : 12.4 - 15.3}***

Rep. Story wanted clarification regarding the surety bond. Mr. Montalban replied it was very difficult for small oil and gas companies to now get a surety bond but it is possible for individuals to get a surety bond. ***{Tape : 1; Side : A; Approx. Time Counter : 15.3 - 18.2}***

Rep. Ewer asked what department was in charge of this issue. Sen. Keating replied it was the Oil and Gas Commission. He referred to a letter by Commissioner Tom Richmond who said "we do not see a surety bond as a lesser form of financial assurance than a CD or a property bond under current law." ***{Tape : 1; Side : A; Approx. Time Counter : 18.2 - 20.7}***

Closing by Sponsor: Sen. Keating closed. ***{Tape : 1; Side : A; Approx. Time Counter : 20.7 - 22.7}***

HEARING ON SENATE BILL 411

Sponsor: Sen. Bill Crismore, SD 41, presented the bill. He distributed an amendment. **EXHIBIT(nah64a01)** He had a letter from Dr. Crofts, the Commissioner of Higher Education in support of the bill and Daniel Roberson. **EXHIBIT(nah64a02)** **EXHIBIT(nah64a03)** He explained this bill would allow the State Land Board to give a report to all of the recipients of the state forest lands, which represents about 500 thousand acres. The concern was the state was not generating very much revenue, and in fact some of those section did not generate any revenue for the school trust lands. Some of the sections have never been managed with an income at all. The State Land Board would have to give a report annually. There are ten different agencies that receive money from these lands. He pointed out the state pool for investments generates about 9%. However, we are only generating 1 1/2-2% off of state lands. This brings attention to people that we are not receiving fair value for these lands. He described statistics from 1919 to present day demonstrating the low yields from state lands. ***{Tape : 1; Side : A; Approx. Time Counter : 22.7 - 32.4}***

Proponents: Cary Heggreberg, Montana Wood Products Association, spoke in support of the bill. He distributed a copy of a citation from a Montana Supreme Court case, the Department of State Lands vs. Pettibone. **EXHIBIT(nah64a04)** He referred to pages 1-5 of the handout which described the need for fiduciary responsibility by the state to gain the most revenue and gain from the school trust lands. He referred to the Classified State Forest Land Acreage by Grants handout. **EXHIBIT(nah64a05)** These are specific institutions that receive the proceeds from that land. He noted there were many lands that could be managed that would pay for the state Capitol restoration, but they were not receiving income from those lands. He discussed the vested interest by his association. For example, the harvesting of logs, manufacturing the finished product, transporting it-which employees people to engineer and build roads, heavy equipment, sawmills, log home plants, post and pole facilities, plywood

plants, pulp mills and other manufacturing entities. He described auxiliary enterprises, such as fuel deliverers, insurance sales, issue bank loans for operating equipment, provide electrical parts and services, repair tires and a host of other professional services. He pointed out that sustainable timber management to provide a reasonable rate of return for trust beneficiaries is a good alternative and a good way of managing this land. ***{Tape : 1; Side : B; Approx. Time Counter : 0 - 7.1}***

Patrick Heffernan, Montana Logging Association, presented written remarks. **EXHIBIT(nah64a06)** ***{Tape : 1; Side : B; Approx. Time Counter : 7.1 - 12}***

Joe Lambson, on behalf of Nancy Keenan, Superintendent of Public Instruction and her capacity as one of the members of the Land Board, spoke in support of the bill. He explained he had opposed the bill when it was first presented in the Senate. However, the amendments offered by Sen. Crismore, they now fully support the bill. The Land Board has no problem with accountability to the public on its operations of the state lands. He pointed out the new computer system would be able to generate this type of information. The Land Board takes management very seriously on its forestry lands. He described the background on previous legislation regarding timber harvest. He said the State Land Forestry Management Plan sets the current target for harvest at about 42 million board feet. Lower harvest levels had to do with the market, since timber prices are so low. He noted Scandinavia and the former Soviet Union were cutting into the market on the East Coast for timber. He said they would support the bill with the amendments because it established a valuable management tool and people could assess the return they were receiving on the land. He distributed a chart of DNRC timber sale data. **EXHIBIT(nah64a07)** ***{Tape : 1; Side : B; Approx. Time Counter : 12 - 15.5}***

Rusty Harper, representing State Auditor Mark O'Keefe who was on the Land Board. He said he was sent over to oppose section three of the bill but with Sen. Crismore's amendments he stood as a proponent.

Dan White, Chief Legal Counsel for Secretary of State Mike Cooney, spoke in support of the bill as long as section three was stricken from it. He pointed out other issues needed to be addressed. He pointed out the lawsuit from the Ravalli County Fish and Game vs. Montana Department of State Lands case in which the Montana Supreme Court indicated that income is "a" consideration not "the" consideration regarding school trust lands. Maximizing income is not paramount to the exclusion of

wildlife or environmental considerations from MEPA. MEPA requirements need to be addressed. ***{Tape : 1; Side : B; Approx. Time Counter : 15.5 - 18.3}***

Harley Harris, representing Attorney General Joe Mazurek, a member of the Land Board, spoke in support of the bill with the amendments. ***{Tape : 1; Side : B; Approx. Time Counter : 18.3 - 19.7}***

John Blomquist, Montana Stockgrowers Association, spoke in support of the bill with the amendments. He noted some valuable points regarding the difficulty of managing a land trust. The trust duty has some other considerations, some other obligations such as long term productivity and multiple use. ***{Tape : 1; Side : B; Approx. Time Counter : 19.3 - 21}***

Dustin Doane, representing the Montana Wildlife Federation, spoke as a proponent.

Janet Ellis, Montana Audubon Society, spoke as a proponent, as long as the amendments were offered.

Opponents: Rep. David Ewer, HD 3, spoke as an opponent. He explained the difficulty in assessing asset value of forested tracts. Stock and bond portfolios could be liquidated the same day. Land portfolios are different and are covered by a variety of laws. You won't get the true asset value under the law. He pointed out how easy it was to get a big inflated value on the forested lands.

Questions from Committee Members and Responses: Rep. Erickson asked about the returns on grazing leases and cabin sites. Lambson replied these were all considered and would be available in the new computer system. ***{Tape : 1; Side : B; Approx. Time Counter : 26.3 - 28}***

Rep. Story asked about setting the value for the property. Heggreberg replied there were underlying appreciation of land values which are not spendable but an important means of calculation by the Land Board. He said that private forest land was taxed at its productivity value, its ability to regenerate timber. The bill would ask each land office region to report separately. That was done to give some indication as to whether the forest land in certain areas of the state maybe returning a better return on investment that other areas. He noted the effort was aimed at the valuable forest land, such as the Swan State Forest, that are not generating any revenue. ***{Tape : 2; Side : A; Approx. Time Counter : 0.3 - 6.4; Comments : Tape speed 2.4.}***

Rep. Mood asked why the Audubon leases had risen exponentially over the past three years. Director Clinch replied the department was trying to implement fiduciary responsibilities and obtain full market value on all users. Cabin site rental rates increased and also charges for licenses and leases. He clarified about the current statutes regarding fiduciary abilities. He agreed the current management under the forest management plan was restricted from maximizing forest management. A wide variety of options was looked at including the timber production strategy where the forest lands could be managed strictly for their wood fiber production. That alternative in the plan proposed to yield 60-80 million board feet a year. A wide variety of other facets of state land management was also looked at, such as increased cabin site rentals in the future or other potential commercial developments. A strategy of less aggressive timber harvest management proposals would save opportunities for the future which was the justification in terms of the forest management plan that the department operates under today, compared with the most aggressive, biological sustained yield that was one of the alternatives. ***{Tape : 2; Side : A; Approx. Time Counter : 6.4 - 12.9}***

Rep. Mood asked if there continued to be constraints against the management of forest trust land or any other trust land, constraints provided by statutes, was there a real possibility of lawsuit to the State Land Board to require sale of the land or whatever they had to do to in order to maximize their revenue. Director Clinch said that would be possible as there were a number of state statutes litigated in the last several years relative to their unconstitutional nature. Over the last decade there has been an erosion of the return. ***{Tape : 2; Side : A; Approx. Time Counter : 10.2 - 14.2}***

Rep. Mood asked Mr. Heggreberg about other states that have sold their trust lands and are using the money as investment returns. Heggreberg replied this was true, particularly in the Midwest, have liquidated their state land assets. The western states that is not very common because of the intermingled ownership of forest lands in particular. Western states have made a conscious decision to not sell. He described the way other states have managed their state forest lands. He said they had done an analysis of how the western states had stacked up. A while back, Washington state was earning about 8-8 1/2% on their forested trust lands. Since then, with the advent of spotted owls and various salmon listings under the Endangered Species Act, Washington state has also seen an erosion of their returns. Idaho is doing a good job of managing their land assets for return on investments, but they don't have a calculation that is called for in SB 411 either. There is no formal analysis

comparing one states return on investments to others. ***{Tape : 2; Side : A; Approx. Time Counter : 14.2 - 17.3}***

Rep. Raney asked how this would all work in arriving at an asset value and determining rates of return. He pointed out if we wanted to maximize revenue we could just go clear cut. Also you would have to consider commodity prices, which varies from year to year. It would be difficult to value the asset and use that to push the average rate of return, where there are so many variables involved. Director Clinch replied he would take a broader approach and say if we truly were going to be held to the standard of maximizing income, forest product sales need to be considered. Wood products are only one consideration. You could do a moderate harvest and then maximize the value of those in the market place for other uses, such as commercial recreation or development. Wood products production may not be the long term goal. For example, the Swan Forest value is in the standing timber volume but it perhaps more importantly twenty miles of river front property and magnificent view sheds and some other things. He stated that was the value to capture if held to maximizing revenue, and should be taken into consideration when determining a value. The strategy and the vision of trying to look to the future was one of the reasons the State Forest Management Plan was adopted. It didn't call for accepting a higher timber harvest because we were cognizant that we are in a changing market place and that perhaps a less aggressive harvesting schedule today, in maintaining that asset, would capture some higher value in the future. This bill would be a catalyst for a more detailed discussion on these types of issues, which is healthy in trust land management. ***{Tape : 2; Side : A; Approx. Time Counter : 22.5}***

Rep. Hurdle asked if the Capital and the University trust lands were not presently being managed. Mr. Heggreberg replied there were many tracts of land, such as the Beaver Lake complex, that had little management over the last fifty years. The point of this bill is to address those tracts of land that have not had any management, such as no timber harvesting, no development and no effort to secure revenue from that land, be it from timber harvesting, establishing a golf course or an RV park or anything. If this was a piece of private land, you would want to know what it was worth and what was its return. ***{Tape : 2; Side : A; Approx. Time Counter : 22.7}***

Rep. Wagner asked what the bill would do that could not already be done in current law. Sen. Crismore replied it would mandate the department to give an account of what actually happened with each one of those tracts of land. ***{Tape : 2; Side : A; Approx. Time Counter : 22.7 - 33.5}***

Closing by Sponsor: Sen. Crismore closed. He pointed out the bill does not mention an increase of harvested trees, which was not the intent. He noted a trend of people that did not want that to happen, but there is other ways to make money off of these lands. He mentioned if we owned land and had no other means of income to support our families, we would be looking at a way to make money. He described revenue generating ideas such as cabin leases or trades of isolated tracts. He discussed the 1910 fire and how much growth had occurred since then. ***{Tape : 2; Side : A; Approx. Time Counter : 33.5 - 47.4}***

EXECUTIVE ACTION ON SENATE BILL 411

Rep. Younkin **MOVED DO CONCUR** SB 411. She **MOVED** the amendment. The question was called on the amendment. The motion **PASSED** unanimously 20-0.

Rep Mood **MOVED DO CONCUR AS AMENDED.** Rep. Story discussed a technical amendment that was needed. ***{Tape : 2; Side : A; Approx. Time Counter : 47.4 - 51}***

The question was called on the amendment. The motion **PASSED** unanimously.

Rep. Younkin **MOVED DO CONCUR AS AMENDED.** Rep. Wagner said he was hesitant to support it. The agricultural community could be next. Cabin leases may be the idea of choice and suddenly there would be cabins all along the lakes and rivers, every 50-100 feet, as opposed to harvesting timber on it and letting it grow back and leaving it as wildlife habitat. If this was the only source of revenue for the schools then it should be maximized, but its not, it is additional money. Rep. Tash pointed out the purpose was not to maximize but to optimize the return. This is a long term thing because it deals with a renewable resource. Higher and better use is a consideration. Rep. Younkin added that any trustee, regardless of whether it was a trustee of this land, the trustee has an obligation to preserve the trust properties as a whole and also to keep the property productive.

The question was called. The motion **PASSED** 12-8 on a roll call vote. ***{Tape : 2; Side : A; Approx. Time Counter : 51 - 61}***

EXECUTIVE ACTION ON SENATE BILL 362

Rep. Curtis **MOVED DO CONCUR** SB 362. She pointed out this was a common sense approach to utilize a resource and exercise stewardship.

The question was called. The motion **PASSED** 19-1 with Rep. Hurdle voting no. ***{Tape : 2; Side : A; Approx. Time Counter : 61}***

EXECUTIVE ACTION ON SENATE BILL 499

Rep. Younkin **MOVED DO CONCUR.** She **MOVED** the amendment. **EXHIBIT(nah64a08)** Rep. Younkin asked Mr. North to explain the difference between the 03 and the 04 amendments. Mr. John North replied the difference was the 03 was from Sen. Grosfield. Those differences apply to section 5 which pertain to stream construction projects, such as bridges within the stream. Generally, they provide for those projects, short term water quality standards can be approved. These are known as the narrative standards, to protect uses, as opposed to the numeric standards because those will be exceeded at most stream construction projects temporarily. There are conditions on this that limit the effect and the duration of them. The changes between 03 and 04 occur in subsection one where it says "on authorization by the department" which is referring the Department of Environmental Quality. What has been added is "or the Department of Fish, Wildlife and Parks pursuant to subsection 4". A cross reference to subsection 4 has been added to make it absolutely clear that Fish, Wildlife and Parks can also invoke the short term water quality standards. ***{Tape : 2; Side : B; Approx. Time Counter : 5 - 6.3}***

Rep. Younkin noted this would allow the state to comply with the EPA rules on the water quality standards. If this is not done, the federal government would come in and tell us what to do. ***{Tape : 2; Side : B; Approx. Time Counter : 6.3 - 9.6}***

Rep. Tash noted the EPA applauded Montana's efforts in regards to the Federal Clean Water Act and the compliance to it, particularly 303D. Montana is touted as being a model and an example for compliance with TMDL orders from the federal people. The DEQ had received the letter which follows the primacy concerns in finding local solutions. ***{Tape : 2; Side : B; Approx. Time Counter : 9.6 - 11.2}***

Rep. Hurdle asked about page 4, new section 6, regarding board rules for permits. Todd Everts replied the EPA said you can't assume that ambient ground water will meet surface water standards. If there is a discharge from ground water into surface water, it may have some background level of pollutant.

Rep. Raney asked about previous opposition to the amendments. Director Simonich said the reason this is being done is the EPA has disapproved those portions of the statute that we have in Montana. EPA will promulgate rules for the state of Montana if we don't do something. That provision of law has not really begun to serve the purpose for which it was intended. The EPA continually require parties to go through a federal permitting process that the state didn't require. The State position is to make sure it is handled under state law. ***{Tape : 2; Side : B; Approx. Time Counter : 11.2 - 16.6}***

Rep. Curtiss asked if the Fish and Game Department would become the lead agency or were there two lead agencies. Director Simonich replied the reason Fish, Wildlife and Parks were put in there was because they are the operable state agency that gives approval on a 310 permit. When someone is doing work under the Streambank Preservation Act and they need that 310 permit, it is Fish, Wildlife and Parks that sign off on it because they work directly with the conservation districts. This correctly indicates in law which agency would be a program that uses the narrative standard that had already been adopted by the board. ***{Tape : 2; Side : B; Approx. Time Counter : 16.6 - 17.5}***

Abe Harpstad explained the new section of the amendments deals with in stream construction or stream rehabilitation. Some of those in stream activities are covered by a 310. Some are covered under the 404 permits from the Army Corp of Engineers. The department still has to process those permits for certification. ***{Tape : 2; Side : B; Approx. Time Counter : 17.5 - 18.8}***

Director Simonich commented that DEQ had the 401 certification. The other area that he was aware that another agency would be involved was another section of the law, Fish, Wildlife and Parks had the ability to authorize actions they would be involved with, the 124 permits. He said there were not trying to expand and provide authority to any agency that currently didn't have it but to recognize those agencies that have that and for those activities, rather than operating under a blanket categorical exclusion which is currently in the law. What they would be operating under with these amendments would be setting aside numeric standards and instead implementing narrative standards for those specific instances. ***{Tape : 2; Side : B; Approx. Time Counter : 18.8 - 20.2}***

The question was called on the amendments to SB 499. The motion **PASSED** 19-1 with Rep. McGee voting no.

Rep. Younkin **MOVED** another amendment, #901. **EXHIBIT(nah64a09)** Todd Everts explained that the prior set of amendments that the committee passed struck out lines 4-8 on 7 and replaced them with some language but did not replace them with language that involved existing water rights. This is the Blomquist amendment that says the diversion or withdrawals of waters pursuant to basically the water use act, are non significant activities. ***{Tape : 2; Side : B; Approx. Time Counter : 20.2 - 21.9}***

Rep. Younkin **MOVED** the amendment. She explained that diversions made under the Water Use Act, Title 85, Chapter 2, those are existing water rights. The simple act of diverting water is a non significant act. If somebody wants to put in a new head gate or rip-rap the river, they have to get permits for that. Simple diverting is a non significant act and does not affect water quality. ***{Tape : 2; Side : B; Approx. Time Counter : 21.9 - 23.2}***

The question was called on the amendment #901 to SB 499. The motion **PASSED** 19-1.

Rep. Younkin **MOVED DO CONCUR AS AMENDED.** Rep. Harper asked if the amendment just adopted was narrower, since it was talking about diversions and withdrawals as exempt. It was replaced with customary activities involved with the use of water. He asked what this would mean if he shut a head gate, would that be exempt. John Blomquist clarified the series of amendments addressed the 310 issue. The departments amendments struck the "ii" which was placed in there to make sure that the use of water, establishment of water right or a permit under Montana law was also exempt from non-degradation review, which was addressed in the second amendment which was adopted. Essentially, the EPA concerns have been addressed with these amendments with how 310 permits were handled and not subjecting the utilization of water and water quantity to non degradation use. Rep. Harper commented that customary activities involving the use of water involve more than merely diversions and withdrawals. He pointed out if he could shut down a head gate at 2,000 inches, he could flood a creek out. Blomquist pointed out you do not have to divert the water, the head gate could be shut any time. The water quality laws don't make you divert water. Rep. Younkin pointed out the old language was addressed by the amendments. Rep. Harper noted that a customary activity of closing a head gate could flood a creek. This law would be replacing other law but did not say the same thing. ***{Tape : 2; Side : B; Approx. Time Counter : 23.2 - 32.1}***

Rep. McGee asked what would happen if this bill did not pass. Director Simonich replied if the state of Montana did not take

steps to correct those standards that have been disapproved by EPA within 90 days, EPA must move forward and promulgate federal standards for Montana. Rep. McGee asked what these rules would be. Simonich said we could not depend on EPA promulgating the same rules as we were putting forth in this legislation. Rep. McGee asked if this legislation was DEQ's idea of how Montana ought to deal with Montana's situation and at the same time answer EPA requirements. Simonich said that was correct. ***{Tape : 2; Side : B; Approx. Time Counter : 33 - 34.5}***

Rep. McGee read his prepared statement. He said "Montana has determined our own water quality and lead the way in many areas and was recognized by EPA and applauded us. Then we took some actions a couple of sessions ago and several environmental groups, including MEIC and Northern Plains Resource Council sued the EPA to make Montana comply with EPA standards or their other ideas. EPA goes for years, not doing their job in monitoring us, until the suit. As a result of the suit by MEIC and Northern Plains, EPA threatens Montana with non-compliance and gives us 90 days to comply. So everyone around here has been scrambling in trying to satisfy EPA's mandates saying we must preserve our primacy. So we end up with a de-facto EPA administration in Montana so overturning Senate Bills 330 and 331. Therefore, I say, we kill this bill, we let EPA come in take over and establish their own rules, which they are trying to get us to do for them, and do it at their own costs. Then we close the doors at DEQ and take the savings and give it to the taxpayers or more appropriately MEIC or Northern Plains Resource Council for showing us the right way. This is a direct circumvention of our legislative process. Those of you who hold the sanctity of I-137, beware." ***{Tape : 2; Side : B; Approx. Time Counter : 34.5 - 37.8}***

Rep. Raney replied he did not think any extractive industry or agriculture would want the federal government to decide each rule and inspect Montana business. He pointed out that was why we accepted primacy years ago because we felt we could better treat the people and the businesses in our own state than the federal government. ***{Tape : 2; Side : B; Approx. Time Counter : 37.8 - 39}***

Rep. Ohs asked if the TMDL legislation from last session was secured. Blomquist said it was safe. He noted he was one of the attorneys on the case in Colorado that was referred to by Rep. McGee. The lawsuit was filed down there. There were some interveners here, the state of Montana, Western Environmental Trade Association, Coal Council, and these amendments to the Water Quality Act are pretty fairly and narrowly tailored. What EPA disapproved was fairly minimal. The 308 situation took a lot

of gyrations to get through, the short term authorizations. It was a significant issue to deal with, the question of how we would do 310 permits in short term authorization. He said it was his opinion, that once this was sorted through and EPA figured out, they didn't really think it through too well. The amendments are very surgical and if the legislation is passed, the minor issues are handled. He asked what would the plaintiffs do with the TMDL aspect. There is already a lawsuit over in Missoula, in federal district court, on the TMDL issue. The fate of the TMDL program, to a certain degree, rests with U.S. Judge Meloy in Missoula. EPA has said we are on the cutting edge there, so he was confident about the outcome. He pointed out that the plaintiffs in this case have until the first of April to amend their complaint. They have indicated that they may go after some of the things that EPA has approved. This legislature can't do anything about that. This bill does deal with the surgical aspects that the legislature can deal with. ***{Tape : 2; Side : B; Approx. Time Counter : 39 - 42.2}***

Rep. Orr pointed out the way EPA had interjected into our affairs in Montana was when they had declared that navigable water was interstate commerce and have since far exceeded that. There was a court decision in the Third Circuit Court of Appeals within the last year or two that said the EPA, by extending its reach to streams, ponds, swamps, etc. was a stretch of the imagination. He pointed out we wouldn't be having these discussions if it wasn't misinterpretation of the Tenth Amendment and our unwillingness to assert our rights. ***{Tape : 2; Side : B; Approx. Time Counter : 42.2 - 43.9}***

The question was called on the bill as amended. The motion **PASSED** 14-6 on a roll call vote. ***{Tape : 2; Side : B; Approx. Time Counter : 43.9 - 46}***

EXECUTIVE ACTION ON SENATE BILL 321

Rep. Bitney **MOVED DO CONCUR.** Rep. Mood asked about the narrowly defined transfer stations. Rep. Orr replied the purpose of the bill was to save local government money to pay license fees. The question was called. The motion **PASSED** 19-1 with Rep. Gutsche voting no. ***{Tape : 2; Side : B; Approx. Time Counter : 46.4 - 50.8}***

EXECUTIVE ACTION ON SENATE BILL 412

Rep. Mood **MOVED DO CONCUR.** He pointed out it was good policy to allow some flexibility in slash burning because there are such

narrow windows of opportunities now. The question was called. The motion **PASSED** 20-0. ***{Tape : 2; Side : B; Approx. Time Counter : 46.4 - 54}***

EXECUTIVE ACTION ON SENATE BILL 462

Rep. Younkin **MOVED DO CONCUR.** The Raney amendments were distributed. **EXHIBIT(nah64a10)** He **MOVED** the amendments. He pointed out the need to look at this after the 15 year period. ***{Tape : 2; Side : B; Approx. Time Counter : 55.5}***

Bill Curley explained the public notice provision that is routinely done. He pointed out that even under CECRA this amendment may require a separate comment period for the easement. The party responsible would apply for this as part of a remedy and the department is required, promptly, to hold a public comment period. ***{Tape : 3; Side : A; Approx. Time Counter : 2.5}***

Rep. Raney said amendment number one could say "upon receiving a completed application and following public notice, the department shall allow for a thirty day public comment period". He **MOVED THIS SUBSTITUTE AMENDMENT.**

Rep. Ohs commented that this would allow for two separate comment periods and two separate notices. Rep. Raney said these comment periods could be years apart, since this is near the final remedy period. ***{Tape : 3; Side : A; Approx. Time Counter : 2.5 - 3.7}***

The question was called on the substitute Raney amendment. The motion **PASSED** with Reps. Stovall, Ohs, Tash and Dale voting no.

Rep. Younkin presented an amendment. She **MOVED DO CONCUR AS AMENDED.** Rep. Raney asked why any public body would want to acquire rights in an environmental control site and take on that responsibility. Director Simonich said it made sense for the governing body to acquire because there may be long term maintenance requirements of the site. ***{Tape : 3; Side : A; Approx. Time Counter : 3.7 - 11}***

Rep. Harper pointed out allowing local government to control an environmental control easement is the burden that runs with the land. ***{Tape : 3; Side : A; Approx. Time Counter : 22.7 -23.5}***

Rep. Younkin **WITHDREW** the amendment. ***{Tape : 3; Side : A; Approx. Time Counter : 22.7 - 24}***

Rep. Erickson distributed an amendment. **EXHIBIT(nah64a11)** He **MOVED** the amendment which was #46201. He explained this addressed concerns about remediation, reclamation or restoration knowing that there are already good laws that say the land has to be reclaimed. He was afraid the idea of an institutional control would be used on lands that already have reclamation bonds. Rep. Younkin asked if this would prevent an environmental control as part of an overall reclamation plan that would be ultimately bonded. Todd Everts responded that under this act for this type of environmental control easement, yes it would prohibit it.

Rep. Mood asked why would the fact that a site had been bonded be precluded the use of this tool in remediation. Rep. Erickson replied that reclamation had already been bonded and should be held to. Rep. McGee pointed out an easement was an encumbrance on the ground but not necessarily a remediation. It is a legal status of the land. If I own the land and am bonded for it, why couldn't I also have an easement on that land. Remediation is a legal status, the work can still be done. Rep. Erickson said he was tying it to the law that talks about reclamation, needing to be done, and arguing that if you already have a plan you can't suddenly change it into a golf course. Rep. Tash felt existing law would regulate this.

Rep. Dale said there were numerous cases where changes in times and situations you would want to have the flexibility to reclaim something to the highest use. For example, it wouldn't make sense to spend $30 thousand dollars reclaiming an acre that is worth $250 dollars. ***{Tape : 3; Side : A; Approx. Time Counter : 24 - 30}***

Rep. Younkin pointed out the whole idea was to protect public health with an environmental control easement on an area that has been reclaimed as much as it can be reclaimed. This is not a way for a polluter to avoid having to clean up. There is nothing in this bill that supercedes the State Superfund Law or federal CERCLA law. These laws still must be complied with. She noted that the Erickson amendment if you are going to have a bonded reclamation site you can't have an environmental control easement on top of that. ***{Tape : 3; Side : A; Approx. Time Counter : 30 - 33}***

Rep. Erickson said he was trying to amend the definition section. It says an environmental control site which means any site that may require reclamation, which is pretty broad. He worried this would allow a site that required reclamation to have an environmental control site instead. ***{Tape : 3; Side : A; Approx. Time Counter : 32.1 - 33.8}***

Rep. Ohs said he was against the amendment because it stops institutional controls and stops the intent of the bill.

The question was called on the Erickson amendment. The motion **FAILED** 13-7. ***{Tape : 3; Side : A; Approx. Time Counter : 33.8 - 38.5}***

Rep. Younkin explained this bill did not allow avoidance of CERCA. This would give the department, the state and neighbors to a polluted site, an additional tool to use to make sure that public health and safety are going to be protected. You can only do so much to get something clean. It still may not be appropriate to use that land for some uses.

The question was called on the SB 462 as amended. The motion **PASSED** 15-5 on a roll call vote. ***{Tape : 3; Side : A; Approx. Time Counter : 38.5 - 44.3}***

EXECUTIVE ACTION ON SENATE BILL 383

Rep. Tash **MOVED TO RECONSIDER** SB 383. He felt it was apparent that during the executive action the actions were on the amendments rather than on the bill. He said this was the cluster development bill. The question was called. The motion **FAILED** 12-8 on a roll call vote. ***{Tape : 3; Side : A; Approx. Time Counter : 44.3 - 47.4}***

EXECUTIVE ACTION ON SENATE BILL 345

Rep. Dale **MOVED TO RECONSIDER** SB 345, off the table. The motion **PASSED** 11-9 on a roll call vote.

Rep. Dale **MOVED DO CONCUR.** Rep. Dale presented amendments. **EXHIBIT(nah64a12)** He **MOVED** the amendments. He discussed the need to reconsider the bill. There were differences between urban interests and rural interests in our state. There seemed to be a bigger gap between the urban communities who were producers of services and sellers of services and goods and the rural communities that were the producers of resources. This issue is one of private property rights and protecting our state from a process that was influenced in the way the proponents of I-137 claimed the process was being influenced. He felt that not all the information was put before the public such as the fiscal statement, which was information that was withheld that would have given the voters of Montana a much clearer look at what this vote could cost them. School equalization funding was not discussed at all. Every site is different. Every mineral regime

has different chemical constituents. Other types of mining are much more likely to produce heavy metals that have a possible detrimental effect on the environment. There has been a claim that this protects big corporations, but corporations hire local people. The bill as amended will be a responsible step by the legislation to protect Montana from the possibility of takings lawsuits and to protect private property rights of family operations and independent miners and small companies who have put their own resources and their life efforts into a property, playing according to the rules that have become ever more difficult and jumping through all the hoops and expecting to be able to complete a project and a process and then having it cut off right in the middle. Because of these possible financial ramifications and the inconsistencies with the overall efforts to encourage responsible resource development, the bill deserves another look. He pointed out the amendments #34502.

Rep. Dale explained the amendment reflected the intent of the original bill. He distributed a list of properties who would qualify for protection under the amendment. **EXHIBIT(nah64a13)** He noted both sides used statistics of how people voted, either by county or by House and Senate District. The I-137 results, which have been touted as the will of the people may have been the will of the majority of a very low turn out of voters. **EXHIBIT(nah64a14)** In those counties that had knowledge and familiarity with the issue, the voting margins against I-137 were in the 65-70 range and there were 9 or 10 of those. In those counties where there was an overriding emotion, based on the word cyanide, the biggest pro-vote was 65% and that was in Missoula County. There are enough questions about this that it justifies an exposure to at least satisfy the question of was it fair. He referred to the handout regarding taxes to just one county. He asked if the taxpayers in Montana were prepared to pick up these tax bills. **EXHIBIT(nah64a15)** ***{Tape : 3; Side : A; Approx. Time Counter : 47.4 - 61}***

Rep. Harper discussed concerns about the amendment. ***{Tape : 3; Side : B; Approx. Time Counter : 1 - 2}***

The question was called on the amendment. The amendment **PASSED** 11-9 on a roll call vote. ***{Tape : 3; Side : B; Approx. Time Counter : 2 - 10}***

Rep. McGee presented an amendment to SB 345, page 3, lines 5 and 6 to strike "or any amended permit that expands the mine operation for the life of the mine". Rep. McGee discussed the rationale behind the amendment. The I-137 language begins on line 27, page 2 and continues to page 3. He read that portion of the bill. He pointed out if this was the intent of I-137, the

language on lines 5 and 6 overturns the intent of I-137. The bill would then comply with I-137 and offer to local governing bodies the option of doing something more. ***{Tape : 3; Side : B; Approx. Time Counter : 26 - 28.4}***

Rep. Dale commented that the language would be questionable. For example, if Golden Sunlight Mine had to move a road, that would be an amendment. He pointed out that Mr. Jensen of MEIC said he did not intent to affect the Golden Sunlight Mine but on the day after the permit was issue, his group filed a lawsuit to invalidate the permit. ***{Tape : 3; Side : B; Approx. Time Counter : 26 - 29.9}***

Rep. McGee said he would strike "the life of the mine". He said I-137 said you would not expand but line 6 says you are going to expand. Rep. Dale said given what people understood I-137 did, it was to keep a mine from growing bigger. It would not shorten the active life of the mine if they found additional reserves they could continue. That makes sense to recover the maximum resource. ***{Tape : 3; Side : B; Approx. Time Counter : 29.9 - 33.6}***

Rep. Curtiss pointed out that one of the problems in the state was being undercapitalized. The reason for that is because of ever changing rules and regulations and a lot of that has to do with permits. Four years ago there was a campaign to go to a one stop permitting process so people would know what rules they were playing by. If a mine is operational, they shouldn't have to be closed down or curtailed simply because another permit is required. She opposed the amendment. ***{Tape : 3; Side : B; Approx. Time Counter : 33.6 - 34.7}***

Rep. McGee offered a SUBSTITUTE AMENDMENT. He said line 5, page 3, instead of striking all that language, the language would read "or any amended permit" and then strike the rest of it on line 6 and insert after the word permit "necessary for the continued operation of the mine." He read the amendment. He said he did not understand the permitting process but this amendment would allow a mine to amend their permit to move a road, an operational amendment. ***{Tape : 3; Side : B; Approx. Time Counter : 34.7 - 35.8}***

Rep. Tash pointed out if Rep. McGee did not understand the permitting process, then the amendments may not be that necessary. Rep. Ohs said he did not understand what the amendment would do. Rep. Dale said it would allow the mine to continue operating with necessary amendments, but not expanding in scope. If they find a little bit more reserve they could

amend it and recover that without creating a new operation. ***{Tape : 3; Side : B; Approx. Time Counter : 35.8 - 37.9}***

Rep. Ewer pointed out these amendments were not clear.

Rep. Ohs suggested this be postponed until Friday. ***{Tape : 3; Side : B; Approx. Time Counter : 37.9 - 41.2}***

Rep. Dale **MOVED TO ADJOURN.** The motion **PASSED** unanimously.

ADJOURNMENT

Adjournment: 7:45 P.M.

_____
REP. BILL TASH, Chairman

_____
DEB THOMPSON, Secretary

BT/DT

EXHIBIT(nah64aad)

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SB 499

Call to Order: By **CHAIRMAN LORENTS GROSFIELD,** on April 13, 1999 at 11:26 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Bea McCarthy (D)
Rep. Karl Ohs (R)
Rep. Bill Eggers (D)
Rep. Bill Tash (R)

Members Excused: Sen. Mack Cole (R)

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Larry Mitchell, Legislative Services Division

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Free Conference Committee Hearing SB 499

Discussion:

CHAIRMAN GROSFIELD explained the amendments on SB 499 were rejected in the Senate based upon several issues. A new set of amendments were handed out **EXHIBIT(frs80sb0499a01).** These amendments were not edited.

Larry Mitchell, Legislative Services Division, explained the amendments.

CHAIRMAN GROSFIELD remarked there are several different issues in the amendments and thought each should be discussed. They began with amendment number seven.

Larry Mitchell stated this amendment regards the discharge of ambient ground water.

Curt Chisholm, Deputy Director, Department of Environment Quality (DEQ), informed the Committee before talking about the amendment number seven, he needed to point out this amendment does not reflect what was intended by those who want to reinstate the permit exclusion, because this both reinstates the permit exclusion and exclusion from non-degradation and that is the show-stop for the Environmental Protection Agency(EPA).

So assuming that the intent of the amendment was simply to exclude the discharges of unaltered ground water from permit exclusions, the director of DEQ has spoken to Max Dodson from EPA yesterday and Mr. Dodson expressed a lot of anguish about this kind of a permit exclusion.

This is not a standards issue, it is a permit issue and EPA cannot disapprove a state statute, which is not a water quality standard. The State at one time was arguing that a point source discharge which does not contain pollution does not need a permit. EPA is more strongly, than ever, arguing any point discharge, whether or not it contains pollution does require a permit. That is the only way to ensure that discharge does not contain pollution. If it does, the pollution is controlled and also what it does to the surface water.

Based on that, **DEQ Director, Mark Simonich,** who was not present at this meeting, asked **Mr. Chisholm** to express to the Committee not to re-instate this permit exclusion back into the law, simply because he feels in the long run it will be a source of contention with EPA and we will be arguing over it for months if not years. It would be better left out of this particular clarification with EPA to get our water quality standards in the position they can be approved by EPA. Also, we do not gain anything in the long run by excluding discharges which are currently exempt by this provision of law.

CHAIRMAN GROSFIELD alleged this refers to any kind of a discharge for any purpose. So we are talking about well tests as well.

Mr. Chisholm remarked that is correct. Any discharge of unaltered ground water, this whole issue refers to a permanent exclusion from that.

CHAIRMAN GROSFIELD related it seems to him there is a lot of relatively minor activities which go on that if a permit is required in each case, a burden is being placed on people. For example, if someone wants a domestic well behind their house and

the driller drills and finally finds a little bit of water and does a quick test to see how many gallons are there, he might dump 100 gallons on the ground which is a one-time deal. Without an exclusion this person is going to have to come in before he drills the well or probably not until he finds some water, then he will have to delay his project.

It seems to **CHAIRMAN GROSFIELD** there is a lot of those kinds of examples. Another could be putting in drain tile around a foundation to keep water away from the foundation of a house or to keep it out of a basement. Now they are going to need a non-degradation permit? It seems to him that is going a little over-board.

Mr. Chisholm replied when this issue first came up and the question was raised about whether or not a discharge permit was needed for those kinds of occurrences, they were all covered by this provision of law which was put into law in 1995. Apparently, there are ways to deal with those which is not too onerous. They can get general permits and people still have to get permits for foundation drains.

He thought **Mr. Simonich's** position in this, is he does not EPA hassling DEQ over this thing. It would be easier just to forget these kinds of discharges. It would increase the department's workload and some of these sources would be vulnerable to having to go to DEQ for discharge permits. They certainly wouldn't be a priority with the department and the department, at times, would use some discretion as to whether or not some of these discharges would require a permit in the first place. Admittedly, some of this things would be open to challenge by whomever would like to challenge it without this exclusion.

CHAIRMAN GROSFIELD asked **Steve Pilcher** to respond to this issue.

Steve Pilcher, TVX Mineral Hill Mining and Stillwater Mining, remarked he would like to provide additional information that should help understand the need for the provisions that are being discussed. First of all, you have to keep in mind a regulatory permit program should be used to deal with potential problems. It is to deal with pollutants which are being discharged and have the potential of causing problems in a stream. A permit program should not be used just to be a burden on those people who are not causing a problem. It is really that simple.

Regarding the fact the EPA is saying they don't think they like what we are doing here, it is easy for Max Dodson or Bill Yellowtail to sit in Denver and tell them they don't want this

done. He mentioned the letter of December 24, which disapproved standards.

Mr. Pilcher recounted that **Deputy Director Chisholm** mentioned this wasn't as much a standards issue, but the only thing EPA mentioned they want out of the current Water Quality Act in this particular section, was the phrase which states, "and is not degradation". To delete that phrase is consistent with some of the other changes in SB 499. In that letter EPA did not say, "and you have to delete the section which excludes the discharge of unaltered ground water from the permit requirements". Historically, there have been a number of unaltered discharges to ground water which have taken place throughout the State of Montana. They have foundation drains to protect the foundation, they have field tile drains to lower existing ground water to allow proper plumbing and other activities, and this could be stretched so far as to say flow-through spring tanks for livestock watering are an unaltered source of ground water, which in many cases eventually find their way to surface water.

Should a permit regulatory program be applied to all those discharges? Maybe this is not a resource issue, but there may be someone who will say there is no provision in the law that protects that from happening. Historically, the policy of the Department of Health and Environmental Sciences and subsequently, the Department of Environmental Quality, was to allow those practices. The provisions were added in 1995 legitimized that particular policy and practice. There was discussion where the original proposal was if a person was doing nothing to ground water but dumping it into a stream, they were free to do whatever they wanted.

When they decided they didn't want 'skunky' ground water in a stream and causing serious pollution problems, is why the language as exists today in the Water Quality Act. So there is a safety net to ensure somebody doesn't just pump it out and trash the stream. In those cases where you are merely taking ground water out of a location, do nothing to it but it goes into a pipe and directly into surface waters, as long as those qualifications are met, why should we burden that segment of the community with a regulatory program?

Jeff Barber, Environmental Information Center, expressed he realizes **Mr. Pilcher's** stand on foundations and other things but they saw this as a provision to allow the Blackfoot Mine to drain the aquifer up at their site that had arsenic in it. Under previous standards in 1995, **Mr. Barber** saw it as a way to de-water the aquifer and go ahead with their proposal.

Regarding the stock water tank, **Mr. Barber** said he didn't really know and hadn't thought about it enough.

REP. OHS mentioned the irrigation wells. Irrigation wells could very easily get into ground water.

Mr. Barber responded this is a pretty open-ended provision with the way the language is right now.

REP. EGGERS asked if **Mr. Barber** knew of any process within the department as it exists right now whereby some rules could be adopted to result in a permit waiver for some of these consequences as **SEN. GROSFIELD** has requested.

Mr. Barber responded he isn't aware of any, but would have to ask the department.

REP. TASH stated regarding **REP. OHS'** statement about a strict interpretation, this could even include irrigating your lawn.

Mr. Barber answered, "absolutely". What he is trying to say is he does not agree with that strict interpretation.

CHAIRMAN GROSFIELD asked **Mr. Chisholm** if he had any comments on this subject. How can we exclude some of these situations?

Mr. Chisholm responded he thinks the department will have some discretion in requiring permits for some of these discharges. He believes they were caught by surprise not realizing that stock watering tanks and foundation drains, also construction de-watering, had been covered by this provision of unaltered ground water based what was put into law in 1995. The department has some discretion in not requiring permits and in some cases, certainly they would have enforcement discretion for some of these things.

CHAIRMAN GROSFIELD voiced from heads nodding on this Committee, he believes the Committee would like to see some kind of middle ground. He asked the people to work together to come up with something next meeting.

He then referred to the implications of the savings clause with respect to these things talked about. The savings clause as it is presented in amendment 10, subsection 2, under 'A'.

Larry Mitchell conveyed subsection 2 addresses those things which were once considered non-significant. These amendments came over to him this morning, and drafting them in a hurry, he has made an error on amendment number seven. On page 6, amendment 7 there is

a very key provision. At the end of the first sentence, the words "and is not degradation", those words are not part of this amendment.

Mr. Mitchell said the issue **Mr. Chisholm** is trying to relate is the permit provision and the non-degradation issue are two separate things. The amendment does not include these words.

CHAIRMAN GROSFIELD opened discussion for groundwater definition, which is number 5 on page 2.

Mr. Chisholm explained this definition is the expulsion of groundwater from the definition of high quality waters. In this particular issue, there is some benefit to the department to have that definition in there.

He said **Mr. Simonich's** position on this is he wanted to caution this Committee from putting that exemption from the definition of high quality waters in at this particular juncture of the legislative history of this bill. He said that would place a provision or exclusion from the definition of high quality waters which wasn't subject to public debate and he didn't want to put the governor in a position of compromising by that kind of exclusion, at this point in time, in this particular bill. This definition has nothing to do with the reason this bill existed in the first place, that is to correct any problems DEQ had with the EPA on water quality standards. This is simply a vehicle to get a definition in there which will be an advantage to the department when making subdivision decisions. There are people in Eastern Montana who had a fit about a similar attempt on the part of the department to not have to worry about that type of aquifer to the department's rule-making. They even brought 'batman' in to kick DEQ around at a meeting of the Board of Environmental review. That is **Mr. Simonich's** message to the Committee on that particular issue.

CHAIRMAN GROSFIELD referred to amendment 10. He asked **Mr. Chisholm** in the past five years, activities relative to things like constructing or repairing a head gate, without having a savings clause, are we affecting those activities? What is the section of limitations on this?

Mr. Chisholm responded they were not concerned about this, either through litigation or through the EPA's enforcement. Anybody would be called to task for activities which were clearly permitted by law up to the time the EPA said they couldn't approve the standards and they would have to be fixed.

CHAIRMAN GROSFIELD asked if that was the letter of December 24, 1998.

Mr. Chisholm answered the plaintiffs are arguing they want to go back and challenge that, at least in terms of what the department intends to do. He did not think construction activities under short term authorizations would be subject to anything the DEQ does. There is approximately 150 short-term authorizations granted by DEQ for construction activities which have not yet taken place. Without a savings clause, those people would have to comply with the new provisions of this bill, whatever effective date this bill goes into effect. This would mean the provision would have to be changed under which they could carry out their construction activities and DEQ would do that. They would simply notify them and call and tell them DEQ would have to issue them a permit now, because that is what EPA requires in place of short-term authorizations. That could be done by the department without a lot of agony of the holdings of authorizations for short-term construction projects.

CHAIRMAN GROSFIELD asked if the short-term construction projects were all 310 permits?

Mr. Chisholm responded he did not know.

CHAIRMAN GROSFIELD asked what the agency permit was.

Mr. Chisholm answered they have 310 permits for private people and agency permits are 124.

CHAIRMAN GROSFIELD asked if they were all either 310 or 124.

Mr. Chisholm answered 'yes'.

CHAIRMAN GROSFIELD asked **Mr. Pilcher** if he would like to respond to this issue.

Mr. Pilcher responded they struggled a long time with some of the language to deal with EPA's concern over the short-term authorizations. They felt very strongly it was a program which acknowledged legitimate, necessary activities that would have some adverse impact on water quality. Through either 124, 310 or subsequently the 3A authorization, if in fact, there is likely to be some significant impact, they were adequately controlling that.

He thinks the language accepted in House Natural Resources Committee takes care of that problem, but it is a fairness issue. A lot of people acted in good faith in accordance with the Water

Quality Act provisions which were in effect at the time. Whether it be the short-term authorizations or decisions the agency made under the other provisions which are identified in Section 2 of this applicability provision, in fairness we owe them some protection. The TVX Mine has exploration activity and drilling, they encounter water, and they capture that water before it is contaminated by any blasting material or anything else, and they can then discharge that water. Once you begin that discharge, it continues. Now, without an applicability provision, somebody is likely to come back and say now we need a permit.

There are other examples where people have acted in good faith, they are discharging water which is not causing a problem, but suddenly we expose them to the possibility of a third party. **Mr. Chisholm** has talked about the discretion and **Mr. Pilcher** is concerned about that because he doesn't think the agency has had as much discretion as the third parties which are coming in and reminding the agencies that there is no provision that this can discharge without a permit, so you've got to require a permit. He thinks we should provide protection for those people who did what was appropriate and necessary at the time of action and they are continuing to abide and act in good faith.

CHAIRMAN GROSFIELD asked other than the 150 pending construction projects, how many other permits might this affect?

Mr. Chisholm answered the 150 pending projects under the short-term authorizations were extreme for construction. Relative to discharges of surface water from non-degradation review, he can think of three examples. There is discharge of surface water at the TVX Mine, there is the Stillwater Mine at Gardiner, and there are about 11 wells owned by Redstone Gas Company who is using a de-watering technique in order to extract methane gas from coal fields. That's all they know of that would be affected by a non-savings clause for non-degradation review.

CHAIRMAN GROSFIELD asked **Mr. Barber** to testify on this subject.

Mr. Barber stated they are involved in a lawsuit over these provisions so he is not sure what the impact of this is.

REP. OHS thought overall, the Committee had other issues to consider and they should do that and then come back.

CHAIRMAN GROSFIELD asked what **REP. OHS** thought of exempting the current construction permits.

REP. OHS responded he thought that is what we need to do.

REP. MCCARTHY asserted she thought it is only fair to the people who have asked for those permits. They did it in good faith.

CHAIRMAN GROSFIELD asked what about methane gas or the TVX Mine or the Redstone Gas? He asked **Mr. Chisholm** give a short summary of the methane gas issue.

Mr. Chisholm claimed the Redstone Gas Company is excluded from requiring a permit. They want a water discharge permit from the State just to be sure they are not discharging water against EPA standards.

CHAIRMAN GROSFIELD alleged, then they are willing to get a permit anyway.

Mr. Chisholm responded they are. But the non-degradation exemption is gone and so they will have to go through non-degradation review. ***{Tape : 1; Side : B; Approx. Time Counter : 42 - 49}*** He thinks there will be many, many more wells requesting permits in the eastern part of the State for this type of activity.

CHAIRMAN GROSFIELD asked how many more wells is that?

Mr. Chisholm responded probably in the thousand range. He said **Mr. Simonich** also wanted him to express his position on all three of these issues. Regarding the savings clauses, **Max Dodson** insisted this was a 'show stopper' as far as EPA is concerned.

Mr. Chisholm explained he is not exactly sure what EPA could or would do about short-term exemptions if there was a savings clause for people who already have an authorization to conduct construction activities. Hopefully, those construction activities can be completed at the end of the construction season. He thinks what EPA is primarily concerned about are the long-term exemptions or the long-term savings clauses for the TVX discharge. The data is exempted from this point forward but it can be discharged for perpetuity and they are exempted from what took place before the law was changed. He believes that is where EPA would draw the line and create a considerable problem for the department.

REP. TASH asked what the position of the department would be as far as the saving clause time wise to deal with these non-degradation issues and permits on the methane gas development.

Mr. Chisholm answered in terms of workload and how long it would take to get permits out, he asked **Jan Sensibaugh, Administrator, DEQ,** to respond.

Ms. Sensibaugh responded there are so many unknowns about the quality of water and what the receding water is, etc. They are working one to two months to get normal, non-controversial permits out the door. They are trying to do as much general permitting as possible, where they do the permit once, put it out for public review and do authorizations for discharge under the general permit for each individual activity which came in.

CHAIRMAN GROSFIELD asked if their general permitting authority is clear in statute.

Ms. Sensibaugh answered, "yes, it is".

CHAIRMAN GROSFIELD inquired what the cost is.

Ms. Sensibaugh stated the application cost depends upon the quality of water and the points source discharge up to $2500 for point source discharge. There would be an ongoing fee of $200 per year to hold the permit.

CHAIRMAN GROSFIELD asserted thinking about the flow-through stock water tanks at $200 per year, he doesn't think this is right.

Mr. Pilcher added, in regard to the Redstone Gas situation and the coal bed methane gas, currently they are discharging from the 11 wells under the provisions of the Water Quality Act as it now exists. It states they can do so without causing a permit. They are, as has been mentioned, proceeding to obtain a permit for two reasons. One is given the potential future activity, they know that EPA is going to be looking at it and instead of getting into a battle with them, they will probably go ahead and seek a permit. Secondly, one of the reasons is there are times of the year, because of existing quality of groundwater, they might not meet the qualifiers associated with the ability to discharge without a permit. There are times of the year when they could violate surface water quality standards and they wouldn't be allowed this permit exemption.

In the case of the TVX ongoing discharge, they would continue forever maybe, but it is not the discharge of pollutants, it is discharging ground water which is not causing problems in the surface water receiving stream. He wanted to make that distinction in the case of the Redstone Gas Partner's Distributing.

CHAIRMAN GROSFIELD asked the Committee to meet again at 8:30 a.m. the next day.

ADJOURNMENT

Adjournment: 12:15 P.M.

_____
SEN. LORENTS GROSFIELD, Chairman

_____
Gilda Clancy, Secretary

LG/GC

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE SB 499

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on April 15, 1999 at 8:36 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Bea McCarthy (D)
Sen. Mack Cole (R)
Rep. Karl Ohs (R)
Rep. Bill Tash (R)
Rep. Bill Eggers (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Larry Mitchell, Legislative Services Division

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Free Conference Committee SB 499
Executive Action: SB 499

Discussion:

CHAIRMAN GROSFIELD remarked instead of talking about an applicability clause, we need to be talking about a savings clause.

Larry Mitchell, Legislative Services Division, explained **EXHIBIT(frs82sb0499a01)** and **EXHIBIT(frs82sb0499a02).**

EXECUTIVE ACTION ON SB 499

Motion/Vote: **SEN. MCCARTHY** moved that **THE AMENDMENT IN EXHIBIT 1 BE ADOPTED. Motion carried unanimously.**

Motion: **SEN. CRIPPEN** moved that **THE AMENDMENT IN EXHIBIT 2 BE ADOPTED.**

Discussion:

Mark Simonich, Director, Department of Environmental Quality (DEQ), commented the department opposes this amendment. They do not believe it is necessary and causes additional difficulties with EPA's decision on water quality standards in Montana. He recognizes many think EPA won't do anything about this, but a suit was brought forth and EPA enforced this action. He doesn't think we can expect that EPA will act as they have in the past and do nothing. If we bring legislation out of this session which does not allow DEQ to fully put their programs into place in a way that they can convince EPA they are satisfactory with federal requirements, we can be guaranteed that EPA will respond. He does not believe this is in the best interest of the people of Montana.

REP. EGGERS remarked **Mr. Simonich** gave a general statement to the objection. He asked him to be more specific as to what language this included or excluded from this clause which attention should be given to in order to comply with the standard of acceptability.

Mr. Simonich explained this savings clause deals with a number of types of discharges. They haven't been able to qualify these and EPA is concerned with the number and types of discharges which may be grandfathered into the savings clause. The EPA specifically was not going to approve Montana's exemption of discharges from non-degradation review. The language which was drafted in **EXHIBIT 2** was very narrowly drafted to deal with short-term construction activities. The fact these activities could have already taken place or have been authorized and will take place is a moot point. If EPA challenges this, it will be done before anything can take place on it.

REP. EGGERS stated, in other words, the language is too expansive in regard to the exception, in dating back to the passage of the statute.

Mr. Simonich believes that is accurate.

REP. EGGERS asked how this could be changed to conform to what is acceptable.

Mr. Simonich responded their idea of something which is acceptable is embodied in **EXHIBIT 1.**

John Bloomquist, Montana Stockgrowers Association, commented from the discussion on April 14, a savings clause is entirely appropriate for those activities which commenced under the law at the time of activity. He is not sure EPA will respond to savings clause issues by the legislature. If we are going to worry about every time somebody is going to sue or complain, we might as well hang it up. People can challenge any aspect and try to put the pressure on EPA to disapprove this. Those activities should be able to continue as long as they are not increased and that is specifically what **EXHIBIT 1** does.

CHAIRMAN GROSFIELD remarked this is an issue which impacts the State's relationship with the EPA. It is important to have a record of it. This bill began with the letter of December 24, 1998 and the follow-up letter in January. The EPA had some limited comments on our water quality laws and rules which we have had over the last several years. Some comments extended back to the 1970's. The purpose of this bill is to respond to that.

While the EPA, under the Federal Clean Water Act, obviously has authority which supersedes Montana authority, nevertheless, we have a Montana legislature which deals with policy areas and especially in the area of savings clause issues.

CHAIRMAN GROSFIELD is concerned we might end up going naked with respect to some of these past activities, which people did in good faith and even present activities such as flow-through stock tanks, foundation drains and some of those kinds of things. He can't imagine the EPA wants to go through some kind of a big process on every one of those. He doesn't want to put Montana citizens in that kind of position. It seems to him we are going back to activities conducted in good faith and reliance on the law, and it is the responsibility of the legislature to provide some protection to the citizens of this State.

REP. TASH mentioned in Denver when they met with Region 8 people and also noted in their letter, **CHAIRMAN GROSFIELD, Director Simonich** and he heard the region lost faith for developing non-degradation and implementation procedures in the absence of detailed EPA requirements, or national implementation guidance at a time the majority of the State lacked this type of implementation. This is exactly why they attended that meeting

and were applauded for the efforts in regards to compliance with the Federal Clean Water Act. He feels Montana has a good track record.

SEN. MCCARTHY alleged she fully understands the implications of this amendment. She lives in the area of the State which is being cleaned up as the Super Fund. She also understands the control which EPA has made on our water. She feels we need to make this statement and for that reason, she made the motion for this amendment.

REP. EGGERS thought there appears to be some question regarding the acceptability of this amendment by the EPA. Unfortunately, we haven't gotten an advisory opinion from them on it, pro or con. This leaves us in a position of possible vulnerability which raises the question of what the possible consequences may be if this is passed and the EPA doesn't like it. He read this amendment as being a grandfather clause and feels he needs to be directed by **Mr. Simonich** to be compliant with what the EPA wants. He believes **Mr. Simonich** is better advised on the subject than he is.

SEN. COLE expressed as an old federal employee, he feels this is something which is policy and something he can support.

Vote: Motion that **THE AMENDMENT BE ADOPTED (EXHIBIT 2) carried 5-1 with REP. EGGERS VOTING NO.**

Motion/Vote: **SEN. MCCARTHY** moved that **SB 499 DO PASS AS AMENDED. Motion carried unanimously.**

Larry Mitchell, Legislative Services Division, submitted the final version of amendments. **EXHIBIT(frs82sb0499a03)**

ADJOURNMENT

Adjournment: 8:53 A.M.

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SEN. LORENTS GROSFIELD, Chairman

_____
Gilda Clancy, Secretary

LG/GC

EXHIBIT(frs82sb0499aad)